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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

HAMID MIKE SAMADI,

Petitioner,

v.

MARLENE H. OLIVER

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

HAMID M. SAMADI
Pro Se Petitioner
4555 Bettys Branch Way
Evans, GA 30809
(706) 364-0555

QUESTION PRESENTED

Are creditors in a Bankruptcy action entitled to an accurate calculation of loss interest under the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et. seq*, and can a Bankruptcy Court under using 11 U.S.C. § 506, disregard creditor loss by applying a formula - calculating interest that does not take into account actual creditor loss (especially when payments were made sporadically)?

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OPINION BELOW

The opinion of the court of appeals is not reported in the Federal Reporter but is reprinted in Appendix 1. The District Court's Order is not published; however, it is reprinted in the Appendix 2.

STAEMENT OF JURISDICTION

The Judgment of Court of Appeals was entered on December 30, 2008. A Motion for Extension of Time to file Brief was filed on March 30, 2009 and the Court allowed Petitioner-Appellant until May 29, 2009 to file his brief. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decisions on writ of certiorari.

INTRODUCTION

This is as a result of interest calculations on an over-secured note issued by Debtor-Plaintiff-Appellee (Oliver) to Creditor-Defendant-Appellant-Petitioner (Samadi) in 1994. As a result of years of litigations, the Bankruptcy Court ruled that Samadi is entitled to interest and granted an amount on a note that its payments were made sporadic (before and after the Chapter 13 petition was filed). The dispute arises from the interest amount Ordered where in calculation of interest, a standard mortgage amortization method was used and no consideration given for any controversy of the sporadic and inconsistent payments.

STATEMENT OF THE CASE

The issues before this Honorable Court arise from a real estate sales (hereinafter the "contract") that stated.

> "*In case of default in the payment of the aforesaid installment, and in case the holder of this note should elect, on account of such default, to declare the unpaid balance of the principal sum due and payable, said*

principal sum, or so much thereof as may remain unpaid at the time of such default, shall bear interest at the rate of fourteen and one half per cent (14 ½%) per annum from the date of such default."

The Contract also states, "*In case this note is collected by law, as through an attorney, all cost of collection, including fifteen percent 15% of the principal and interest as attorney's fees, shall be paid by the maker hereof."* This contract was prepared by Mr. Sampson Oliver (Debtor's father - who at that time has been practicing law for over twenty years). This Contract was presented to Samadi (who is a layman), was asked to sign it in Mr. Oliver's office (prior to Samadi having any knowledge of its content).

On November 15, 1995, Oliver defaulted and the note became due and payable. Samadi compromised with Oliver and her family and extended the time for the family to obtain a loan elsewhere. Meanwhile, Oliver was making sporadic payments. When the refinancing attempt failed, Samadi initiated foreclose which took the matter before Chapter 13 Bankruptcy Court (hereinafter "BC") on September 26, 1996.

Although the history of this bankruptcy matter is extensive; however, at the discharge hearing, Samadi raised the issue that he was not paid in full. Yet, the BC overlooked his note and amended proof of claim and discharged the matter on June 2000. When Samadi did not released the property (a Quit Claim Deed), Oliver moved to reopen the case and filed an Adversary Petition on December 29, 2000. In March 2002, the BC vacated discharge Order in part to allow interest and legal expenses on secured note.

In March 2004, the BC Ordered Samadi to present itemized statement showing the amount of interest and present the same until March 31, 2004 (Exhibit A (Bankr. Order, 00-06893-MHM, Mar 9, 2004 at 3-4.)). Moreover, the Order requested a detailed accounting of the collection costs and expenses. (Id. at 4.). As a result, Samadi

complied with the Order and later presented a couple of amendments to the amortization, since the BC had not ruled (Exhibit B-showing one of the Amendments). On each of amendment and amortization provided, Samadi clearly noted that the amortization file is electronic- using Lotus 123 Spreadsheet software and is available for review or recalculation. Therefore, Samadi attempted to reduce or avoid any inconsistencies - discrepancies and resolve all disputes as the BC would have deemed necessary. However, the BC never requested to examine the file or ask for modification of such calculations. On September 29, 2005, the Honorable BC ruled in favor of the Samadi for the amount of interest; however, denied him legal cost. The BC further saw no ground for his unsecured claim in Chapter 13 (Exhibit C- (Bankr. Order, 00-06893-MHM, Sept 29, 2005 at 2, ¶ 3).). Please see ***Travelers Casualty & Surety Co, of America v. Pacific Gas & Elec. Co.*** (No. 05-1429) 167 Fed. Appx. 593. The BC Ordered, "*Defendant's Claim as of November 15, 1995 was $35,000.00 and the interest rate is 14.5%. The interest on that claim through September 15, 2005, equals $30,868.79. Defendant acknowledges payments from Plaintiff made after November 15, 1995, of $3,600 plus 35,261.41, leaving a balance due to defendant as of September 2005 of $27,007.38.*" (Id. at 3 ¶ 1.).

The BC left Samadi with no options on his unsecured claim in a Chapter 13, where in ***Travelers Casualty & Surety Co, of America;*** this Court disagreed with dismissal of unsecured creditor claim for Attorney's fees in a chapter 11 case.

Samadi felt compelled to the amount Ordered. He was unclear how the BC arrived to the figure and asked the BC for a clarification how the amount was reached. In fact, Samadi contacted the Honorable Judge's Law Clerk to receive an understanding of the formula the BC used. Since Samadi did not receive any answer to his inquiry and after speaking with a few professionals in the field of accounting, mortgage and bankruptcy law, Samadi filed a Motion to Amend Order and presented several methods of

calculations (one detailed) showing that the BC's amount of interest calculated is far less than whichever method used. Please see Exhibit D.

The BC rejected Samadi's motion and argument by stating, "*Although Mr. Samadi has presented several proposed calculations of interest on his claim, his methods of calculations have not been explained and do not appear to comport with standard accounting methods.*" Exhibit E, (Bankr. Order, 00-06893-MHM, Nov.9, 2005 at 1, ¶ 2.)).

Samadi filed an appeal for a review of the interest calculation Ordered by the Honorable BC (Exhibit F). Meanwhile, Oliver unknowingly initiated a new set of motion before the BC which caused a storm of motions between the parties and Orders from the BC. Those motions had no direct relevance other than issues of appealing the Order of dollar amount in controversy. They were accumulations of motion for extension of time and motion for reconsideration and others and collectively amounted into motions for the parties to file an appeal.

On the appeal before the Honorable District Court (hereinafter "the DC"), Samadi argued the same facts by showing his previous amortization and the several methods of calculations he presented to the BC (Exhibit G).

Meanwhile, Oliver was still filing motions before the BC while the appeal was proceeding without her in the DC. Samadi had to again bring the issues of Oliver filing her proceedings in a wrong Court - to the Courts' attention in which both Courts responded. In fact, the DC discussed the Procedural History and issued an Order for parties to comply within a time frame (Exhibit H). In that Order, the DC noted that Samadi did not appeal the BC's Order regarding the legal expenses; however, he also argued the legal expense portion in his brief. Therefore Samadi filed an amended notice of appeal (Exhibit J) while Oliver filed a reply brief (Exhibit I) followed by Samadi's reply to Oliver's brief (Exhibit K) and the DC issued an Order on April 17, 2007 (Appendix 2) (Exhibit L).

In her Order, the Honorable District Court stated, "*...The Bankruptcy Court was required to determine the amount of interest as provided for under the agreement. Having found that Mr. Samadi's interest calculations did not comport with standard of accounting method, and further that Ms. Oliver disagreed with his calculations, the court simply determined the amount owed Mr. Samadi by using a straight-line amortization of his $35,000 claim at 14.5% from November 156, 1995 through September 15, 2005, a period of 118 Months.*" Appendix 2, at 8 ¶ 2. The DC continued, "*However, the Bankruptcy Court's finding is simply the total amount of interest that would be owed over the relevant period has Ms. Oliver paid the amount pursuant to a regular schedule, beginning on September 15, 1995.*" Then, in its footnote, the DC instructed Samadi to find such method used to calculate the interest on a website *http://ray.met.fsu.edu/cgi-bin/amortize*. (Id. at 9.). The DC continued, "*The court acknowledges that this interest calculation is imprecise in that it presumes regular monthly payments of $558.21- which clearly were not made here. However, the bankruptcy court calculated the total amount of interest owed in accordance with the statutory mandate of 11 U.S.C. § 506 (b)- that is, by using the terms of the agreement...*" (Id. at 9.).

Finally, the DC rejected Samadi's analogies in every method of calculation (even though they were used as examples). The DC summarized that Samadi's method are flawed because he is either using "*10 years*" (120 months) as opposed to "*118 months*". In that The DC may have presumed that two (2) months of difference may have caused an overwhelming difference of several thousands of dollars. The Court also noted that Samadi did not consider Oliver made payments. Although Samadi was using the method as an example of showing the range the interest amount would fall; however, he provided a detailed method calculating interest from month to month both to the BC as well as the DC while applied all payments accordingly. The DC did not consider the amortization provided (Appendix 2-

at 7-9), which broke down the payments and interest calculations on monthly basis.

As a result, Samadi appealed to the Eleventh Circuit Court of Appeals briefing the same argument and providing the same or similar detailed method as it was done before the Honorable Bankruptcy Court. In that Brief, Samadi argued that the website the Honorable DC directed Samadi is only for the terms when payments are being made regularly and on time; therefore, Samadi's method comport with what the mortgage companies use. The Honorable 11th Circuit, rejected Samadi's argument (Appendix 1) and stated,

> *"Samadi ultimately presented three different method of calculation, all of which contained flawed. The first method incorrectly projected the interest over a* ***120-month, rather 118 month, period****. The second method similarly calculated the interest over* ***120-months and did not account for any annual amortization****, even though it is undisputed that the Chapter 13 trustee made payments. The last method assigned an arbitrary and* ***admittedly incorrect date to the payments by the Chapter 13 trustee****, thus permitting Samadi to accumulate a large amount of interest before the $35,261.41 payment was deducted. The methods of computation provided by Samadi contained errors, were self-serving, and, as he bankruptcy court noted, did 'not appear to comport with standard accounting methods'" We therefore hold that the bankruptcy court did not err in rejecting the methods of calculation proposed by Samadi."*

REASONS FOR GRANTING THE PETITION

Appellant's finance charges are justified under the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et. seq*. As a secured (especially over-secured) lender, the law and the Courts allow correct and complete calculations of finance charges. This matter is no exception to the

rule. Respondent owed Appellant/Petitioner for years of interest on a principal balance of $35,000.00 (as the Bankruptcy Court noted); at the rate of 14.5% (pursuant to terms of the Agreement and Note) and the period from November 16, 1995 through September 15, 2005 (as the BC noted).

In this bankruptcy petition, setting aside the history and the fact this Chapter 13 petition was fraudulent from the start or continued by false misrepresentation of debtor, the case before the Court is to some extend similar to *Till v. SCS Credit Corp.* (02-1016) 541 U.S. 465 (2004), 301 F.3d 583. The debtor (Oliver) did not confirm, accept or comply as this Court has suggested in option one and two noted below. The Court stated,

> *"(1) by obtaining the creditor's acceptance of the plan; (2) by surrendering the property securing the claim; or (3) by providing the creditor both a lien securing the claim and a promise of future property distributions (such as deferred cash payments) whose total "value, as of the effective date of the plan, ... is not less than the allowed amount of such claim."1 The third alternative is commonly known as the "cram down option" because it may be enforced over a claim holder's objection."*

Besides the fact that debtor claimed to have lived (during filing of the bankruptcy petition) on a second floor of a property where such second floor was not livable by any means or measures (no walls, no plumbing or electrical, etc), Oliver claimed it owed Samadi $29,000.00. Oliver claim this amount because Samadi gave Oliver a settlement amount to be paid by August 31, 1996 **if** and **only if** the loan Oliver was trying to obtain, would close on or before this date. It took a year of proceedings and finally the BC's intervention to obtain an order of $35,000.00 as the amount owed. Therefore, it showed; Samadi did not accept Oliver's plan. It is also known that Oliver did not surrender the property, since she filed an adversary; because, Samadi would not issue a quit claim deed to her.

NOW, even if we presume - Samadi made numerous mistakes-making all his calculations were filled with errors. The case still raises three (3) separate issues.

(1) Without assigning blames, both parties made their share of mistakes through this Chapter 13 process. With no disrespect intended towards the Honorable Bankruptcy Court or District Court, even the Bankruptcy Court over looked Samadi's claims at minimum twice: (1) discharging the plan-overlooking Samadi's amended proof of claim and (2) not allowing legal expenses initially. Furthermore, the Courts favored Oliver repeatedly (1) in changing their scheduling for motions (even after the initial scheduling was entered as an order), and (2) allowing the proceedings continue when there was no issues before that Court. Meanwhile, parties and the Courts clearly understood that Samadi is layman yet, was not seeking preferential treatment as none was given. However, both the Bankruptcy Court and the District Court has shown considerations to Oliver who was being represented by one or two attorney(s) (which repeated made mistakes). I.e. when Samadi raised the issue of fraudulent petition in 1996 through 1999, the BC never responded until after the discharge and at that time, it stated, it is too late to raise the issue. Or during this last sequence of appeals when the matter was before the DC, Oliver was repeatedly filing motions in the BC. As a result, Samadi raised the issue while being respectful and humble, stating that he is confused as to the myriad of motions being filed while the matter was pending before the DC. At that time, the BC perceived that Samadi's was filing random/"Phantom" motions for extension of time or others irrelevant issues. While in reality, Samadi was trying to bring everyone's attentions that Oliver's filing motions on irrelevant bases and in wrong courts. Furthermore, even though the DC mailed an Order, setting time line and stating that these scheduling "***is set in stone***," Oliver was still filing her proceedings in the BC (the wrong Court). Yet, the DC has changed its scheduling to favor Oliver. But, when Samadi

filed it amended notice of appeal so that he could include his additional legal expenses and by mistake addressed it to the District Court, his amended notice of appeal was later decided by the DC to be improper (when the 11th Circuit Court of Appeals addressed it as a Second Jurisdictional Question).

(2) In March 2004, the BC Ordered Samadi to calculate his interest and show per dim until March 31, 2004 (Exhibit A, (Bankr. Order, 00-06893-MHM, Mar 9, 2004 at 4.)). However, in 1996 (before the petition), Samadi informed Oliver through a certified letter that he would be adding "Late Fees". Later, Samadi described it in proceeding before that Court and then added late fees as part of expenses in the Amortization and repeated it in the amended amortizations. If the Bankruptcy Court was not interested to see anything other than the **actual** principal balance and its interest, the BC instruction was not clear. At no time did the Honorable BC instructed Samadi to present a specific format of calculations. That's why Samadi continued amending his amortization and added the other expenses (to include late fees) as they incurred. Yet, on page 2 of Exhibit D (which is Motion to Amend Judgment; Samadi presented a simple method of calculation including payments. However, as the amortization was only on annual basis (one line per year) the only way to apply **sporadic** payments would have been:

i. to apply it to the year a sum of payments were made (i.e. $3,600.00 in 1995-when the payments were actually made in early part of 1996), and

ii. find a median of the years and ratio of amount Trustee made payments - 1999). The record clearly shows that the Trustee's payments were also sporadic and become larger toward discharge date. The median would be 1999.

Therefore, Samadi was left with no instructions from the BC.

(3) Both appeal Courts below (the Honorable 11th Circuit as well and the Honorable DC) referenced that Samadi calculated his interest on 120 months instead of 118 months. However, the difference in finance charges between the two (2) months does not add up to be thousands of dollars. Let's presume a principal is $50,000.00 (an amount much larger than the issue of this case) and the interest rate is 14.5% (the rate of this agreement). The finance charges for two month would only be $50,000.00 *14.5/100/12 * 2(months) = $1,2089.34. This is far from the amount that the Courts below presumed.

However, in none of the methods Samadi used in his motion to amend judgment, which led to introducing new methods in his appeals, did he mention that he is presenting an exact figure. Instead, he was merely showing the gap in the amounts of the BC's Order and where the actual figure **may lie**. The Courts are experienced and Samadi is a layman. He relied on the Courts opinion to show a fair analysis other than the presumption of using a website that calculates finance charges as payments are being made regularly (month-to-month). All Courts below agreed that the payments were sporadic and applied. However, as the payments were not being made, the interest amount would increase and when the payments were made, they were applied and the balance adjusted.

Moreover, the 11th Circuit Court stated, "*the last method assigned an arbitrary and admittedly incorrect date to the payment by the Chapter 13 Trustee, thus permitting Samadi to accumulate a large amount of interest before the $35,261.41 payment was applied.*" Beside the fact that-this issues is discussed in statement (2) (iii) (above), the mere though that a payment should be applied as soon a check is issued would change the entire banking and payment system. We must caution ourselves with such theory. We must not forget the number of days for mail delivery and the possibility that mail may get lost. There are additional facts regarding these payments, such as (1) the Trustee had

to issue a few replacement checks (due to the pass of time, the number of times is unknown), (2) it was repeatedly motioned and argued before both the BC and the DC that time it take for the Orders to arrive is unreasonable; therefore, placed parties in a disadvantage of filing their proceedings out-of-time. (3) The best example of such mail delivery system is petitioner's Motion for Extension of Time to this Honorable Court. The motion was mailed on March 30, 2009 (on time), using the U.S. Postal Service delivery confirmation method; however, it did not reach the Court until April 13, 2009. Although that time delivery is unreasonable and unusual, but it is a true fact and the same was repeatedly argued before the Courts below. Samadi applied and posted the Trustee payments as he was informed of such. (d) There are more examples of the mail delivery issues (excluding the reinstatement of the Trustee checks). The U.S. Postal Service lost two (2) of Samadi's certified mails requiring Return Receipt. Those letters ended up and were destroyed by the U.S. Postal Services "Dead Letter Center". Exhibit A presents evidence of one of those mishaps. Such letters should have and without a doubt reached either the recipients or the sender. However, they were destroyed at a U.S. Postal Operation Center. Therefore, if the 11th Circuit presumed that Samadi should have applied Trustee's payments as the checks were issued, it would have been impossible. Samadi applied payments on the dates the checks arrived and he was informed.

In ***Till v. SCS Credit Corp.*** the Court stated, [2nd paragraph under III]

> *"Like the coerced loan approach, the presumptive contract rate approach improperly focuses on the creditor's potential use of the proceeds of a foreclosure sale. In addition, although the approach permits a debtor to introduce some evidence about each creditor, thereby enabling the court to tailor the interest rate more closely to the creditor's financial circumstances and reducing the likelihood that the*

creditor will be substantially overcompensated, that right comes at a cost: The debtor must obtain information about the creditor's costs of overhead, financial circumstances, and lending practices to rebut the presumptive contract rate. Also, the approach produces absurd results, entitling "inefficient, poorly managed lenders" with lower profit margins to obtain higher cram down rates than "well managed, better capitalized lenders." 2 K. Lundin, Chapter 13 ***Bankruptcy*** *§112.1, p. 112—8 (3d ed. 2000). Finally, because the approach relies heavily on a creditor's prior dealings with the debtor, similarly situated creditors may end up with vastly different cram down rates.17"*

Hence, Samadi's theory of calculation (amortization) although **may** seem "*flawed*" is the closest there to the actual figure of amount owed. Meanwhile, Samadi never claimed to be a large creditor with an automated system and a perfect accounting method in this imperfect world, since Samadi's operations has been limited and costly to him. Meanwhile, Oliver was using Samadi's distress and inability to bear the expenses of litigation to her advantage in the proceedings. Yet, Samadi's inability caused him to charge less through time. In doing so, he did not charge late fees [where according to ***ICC v. Transcon Lines*** (93-1318), 513 U.S. 138 (1995) and letter he sent to Oliver, (1) Samadi was entitled to charge fees-but he did not], (2) did not immediately foreclose, (3) gave debtor much unexpected opportunity to "catch-up" and cure the debt and (4) forgave some of the other debt. No creditor would have been as generous as Samadi has been.

In ***Young v. United States*** (00-1567) 535 U.S. 43 (2002), 233 F.3d 56, the Court used the "lookback theory." When applying this, Samadi's claim for interest is not barred. And, the analysis used in Courts below (although they acknowledged the sporadic payments, yet,) did not consider the facts -this was not a normal and ordinary

payment relations for the purpose of using the amortization method used by a website or through the course of mortgage loan.

Moreover, if we apply ***Rake v. Wade*** (92-621), 508 U.S. 464 (1993), Samadi raised several issues of fraudulent petition followed by debtor's deceptive proceedings before the BC. See also *Archer v. Warner* (01-1418) 538 **U.S.** 314 (2003) 283 F.3d 230. In that, Oliver

1. Claimed she was living on the second floor of the property when the second floor only contained rafters and did not have any plumbing or electrical and was unfinished,

2. The amount of claim submitted and repeatedly argued in that Court was $29,000.00 instead or $35,000.00 even when the proof was provided, and

3. Debtor included checks as part of its payments for the property when those checks clearly showed to be payments for the purpose of computer purchased by her father (the attorney).

However, that Court ignored Samadi's cry for justice until after the bankruptcy was discharged and even then the BC noted that, it is too late to address those issues. See also ***Cohen v. De la Cruz*** (96-1923), 106 F.3d 52, and *Young v. United States*, *Johnson v. Home State Bank (90-693), 501 U.S. 78 (1991).*

The 11th Circuit Court also noted; "*In the instant case, Samadi filed his proof of claim, but Oliver rebutted it by an objection to Samadi's method of calculation. Oliver argued, inter alia, that Samadi's calculation was not based on accurate figures and he lacked proof to support this calculation.*" As the 11th Circuit Court reviewed the history of this bankruptcy petition, it must have noticed the fact that Oliver repeatedly argued (1) she was living on the property, (2) the amount of claim is less than the amount actually owed (which due to the confusions created by debtor, it took the BC a couple of years to realize the amount Samadi claim is correct, and a list of Oliver's other objection – among which some irrelevant arguments such as (3) Samadi sold her a "dump", (4) Samadi is none

citizen, (5) Samadi's assistant is non-citizen and (6) Samadi's assistant is his girlfriend. Also, at the time of bankruptcy discharge hearing (June 2000), Oliver objected to Samadi's amended proof of claim, but as soon as she realized the BC overlooked such proof of claim (which in 2002- caused the BC to vacate the discharge Order in part to allow modification of the amount), Oliver withdrew her objection. Knowing the circumstances and the history of this bankruptcy petition, Oliver would object to any suggestions or calculations Samadi would offer. However, Oliver herself did not offer any solutions (although it is understandable that the burden of proof was upon the creditor). Finally, a correct standard and fair amortization (based upon the payment history herein) would not require a proof to support. However, Samadi provided and the 11th Circuit Court noted that Samadi amortized his calculations on monthly basis until March 2004 and continued the rest for April and May 2004 on a daily basis.

CONCLUSION

The courts below based their analysis on a formula not applicable to this case (where payments were made spermatic and stopped for a time period). Furthermore, they concluded, Samadi's calculations are all flawed because (1) Samadi applied much larger finance charges as a result calculating interest over 120 months instead of 118 months; therefore, presumed that the two months would made a generous difference in Samadi's favor. (2) Samadi did not apply the payments until much later date. Although it is not clear how the 11th Circuit Court of Appeals reached this conclusion, however, that Court may have not considered the time it took for mail delivery or the incidental mail losses and replacement checks.

Samadi feels that a close approximation to true calculation exists when he presented his last amortization to the Bankruptcy Court (even though his calculation favored Oliver-debtor, amortized on monthly basis rather

than daily). Furthermore, the same or very similar amortization example was also presented in his appeal in several pages (to include over ten-10 pages to the Court of Appeals) detailing the day to day calculations of interest and payments since default until the date of BC's Order.

WHERFORE, Samadi, Pro Se Petitioner hopes and prays that this Honorable Court would remand the matter for review of interest calculation that would be consistent with ***Rake v. Wade***, ***Till v. SCS Credit Corp.*** and ***Young v. United States.***

Respectfully Submitted,

Mike H. Samadi
Pro Se Petitioner

APPENDIX 1.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCIT

NO. 07-12887
Non-Argument Calendar

D.C. Docket No. 05-03231-CV-BBM-1
BKCY No. 96-75320BKC-MH

In Re: MARLENE H. OLIVER

Debtor.

MARLENE H. OLIVER,

Plaintiff-Appellee,

versus

HAMID MIKE SAMADI,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Georgia

(December 30, 2008)

Before BLACK, BRAKETT AND KRAVITCH, Circuit Judges.

PER CURIAM:

Appellant Hamid Mike Samadi, proceeding pro se, appeals an order of the district court affirming the bankruptcy court's calculation of the interest owed to him by Appellee Marlene H. Oliver.

I. Facts

In 1994, Samadi signed an agreement in which he conveyed a parcel of property to Oliver for $46,000.00 Oliver agreed to make monthly payments until November 15, 1995, at which time the outstanding balance under the contract was to become due. Oliver made monthly payments until November 15, 1995, but was unable to meet the obligation to pay the remaining balance of $35,000 on that date. Samadi thereafter threatened foreclosure and Oliver filed for voluntary Chapter 13 bankruptcy. The bankruptcy court approved a payment plan and Oliver completed her obligations under the plan on July 19, 2000. The Bankruptcy Court closed the estate and discharged Oliver.

On December 29, 2000, Oliver petitioned to reopen her case, alleging that Samadi refused to issue a quit claim deed on Oliver's property, despite full payment through the Chapter 13 bankruptcy trustee. Samadi denied having received full payment and asserted a counterclaim. The bankruptcy court ultimately granted summary judgment in Samadi's favor and vacated its previous order defining the amount of Oliver's debt to Samadi, finding that Samadi's secured claim was not fully paid in Oliver's bankruptcy case.

The bankruptcy court found that because Samadi's claim was oversecured,[1] he was entitled to post-petition interest, and it ordered him to file a statement with a detailed calculation of the interest owed. Samadi calculated interest over a 120-month period, on a monthly

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[1] "An oversecured creditor is one whose claim is secured by collateral whose value exceeds the principal amount of the claim." In re Welzel, 275 F. 3d 1308, 1311 n.1(11th Cir. 2001)

basis through March 2004 and on a daily basis during April and May 2004. Oliver disputed this calculation; therefore, the bankruptcy court "computed the interest due based on the terms of the loan"[2] and reached a total of $30,868.79 in interest (representing 118 months of interest on the $35,000 that was outstanding on November 15, 1995, with an annual interest rate of 14.5% and straight line amortization). The court then deducted payments made by Oliver after November 15, 1995, which totaled $3,600, and the payments made by the Chapter 13 trustee, which totaled $35,261.41. The Bankruptcy court thereby arrived at $27,007.38 in interest, which it ordered Oliver to pay to Samadi.[3]

Samadi filed a motion to amend the judgment, challenging the bankruptcy court's calculation and presenting two alternative methods of calculation. Under the first method, Samadi calculated interest over a 10-year period and did not immediately deducted the $3,600 paid by Oliver, but because "payment dates and amounts made by Trustee were scattered throughout the years," he did not deduct the $35,261.41 paid by the Chapter 13 trustee until midway through the Chapter 13 Cycle. The bankruptcy court denied Samadi's motion, concluding that Samadi's "method of calculation have not be[en] explained and do not appear to comport with standard accounting methods."

Samadi appealed to the district court, arguing that the bankruptcy court erred in making its interest calculation.

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[2] The contract itself is not included in the record on appeal. The Bankruptcy court, however, did make findings as to its terms, concluding that the loan specified a 14.5% interest rate for payments made after November 15, 1995.

[3] The bankruptcy court later amended its judgment to provide an expenses award to Samadi. Samadi appealed the bankruptcy court's expense total to the district court and, upon affirmance, sought to appeal this court. On January 18, 2008; however, this court ruled that Samadi never filed a timely notice to appeal the expense award to the district court. Therefore, we vacated that portion of the district court's order and the merits of that issue cannot now be addressed by this court on appeal.

The district court affirmed and Samadi now appeals to this court on the same grounds.

II. Analysis

Where we serve as the second court of review of a bankruptcy court's judgment, we employ the following standard of review:

> [W]e independently examine the factual and legal determinations of the bankruptcy court and employ he same standards of review as the district court. As the district court made no factual findings in its function as an appellate court, our review is de novo. We review the findings of fact made by the bankruptcy court for clear error. A factual findings is not clearly erroneous unless this court, after reviewing all of the evidence, [is] left with the definite and firm conviction that a mistake has been committed. This Court conducts a de novo review of determinations of law, whether from the bankruptcy court or district court.

In re Int'l Admin. Servs. Inc., 408 F.3d 698, 698 (11th Cir. 2005) (internal citations and quotation marks omitted).

Under the Federal Rules of Bankruptcy Procedures, a creditor may file a proof of claim,[4] which, when executed and filed correctly, "constitute[s] prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f); see In re Bateman, 331 F.3d 821, 827 (11th Cir. 2003). The debtor may rebut the creditor's proof of claim by filing an objection pursuant to Rule 3007. Fed. R. Bankr. P. 3007. When such an objection is made, federal law requires that "the court, after notice and a hearing, [] determine the amount of such claim." 11 U.S.C. § 502(b). The Creditor retains the ultimate burden of persuasion as to the amount

[4] "A proof of claim is a written statement setting forth a creditor's claim." Fed. R. Bankr. P. 3001 (a).

of the claim. In re Harford Sands Inc., 372 F. 3d 637, 640 (4th Cir. 2004); In re Harrison, 987 F.2d 677, 680 (10th Cir. 1993).

Bankruptcy law mandates that the terms of the agreement are to govern the secured creditor's award. See 11 U.S.C. § 506(b) (the oversecured creditor is entitled to "interest on such claim, and any reasonable fees, cost, or charges provided for under the agreement") (emphasis added). In the instant case, Samadi filed his proof of claim, but Oliver rebutted it by an objection to Samadi's method of calculation. Oliver argued, inter alia, that Samadi's calculation was not based on accurate figures and he lacked proof to support this calculation.

Samadi ultimately presented three different methods of calculation, all of which contained flaws. The First method incorrectly projected the interest over a 120-month, rather than 118-month, period. The second method similarly calculated the interest over 120-months and did not account for any annual amortization, even though it is undisputed that the Chapter 13 trustee made payments. The last method assigned an arbitrary and admittedly incorrect date to the payment by the Chapter 13 trustee, thus permitting Samadi to accumulate a large amount of interest before the $35,261.41 payment was deducted. The methods of computation provided by Samadi contained errors, were self-serving, and as the bankruptcy court noted, did "not appear to comport with standard accounting methods." We therefore, hold that the bankruptcy court did not err in rejecting the methods of calculations proposed by Samadi.

The bankruptcy court's award was reached by applying the 14.5% interest rate, as specified in the contract, to the 118 month default period. As the bankruptcy court noted and both parties acknowledge, payments were made sporadically and the dates of certain payments were disputed. Because this made a precise interest calculation impossible, the bankruptcy court used a

straight –line amortization approach, calculating the interest owed as if monthly payments of $558.21 been made equally over the 118 months period. While not perfect, this method was reasonable given the circumstances and reflects the bankruptcy court's adherence to the terms of the agreement, in accordance with 11 U.S.C. § 506(b).

Because Samadi did not satisfy his burden of proving the amount on interest owed to him, the bankruptcy court did not err in using an imprecise, but more comprehensible, method to calculate the interest. Accordingly, we Affirm.

AFFIRMED.

APPENDIX 2.

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HAMID MIKE SAMADI,	:	
	:	
APPELLANT,	:	CIVIL ACTION FILE
	:	NO. 1:05-CV-3231-BBM
V.	:	
	:	
MARLENE H. OLIVER BANKRUPTCY	:	APPEAL FROM
	:	CASE NO. 96-75320-MHM
APPELLEE.	:	

ORDER

After an extended period in limbo, this appeal from the United States Bankruptcy Court for the Northern District of Georgia is finally before the court on the merits. Unfortunately, despite the court's clear admonition that it would likely decline to consider any pleadings other than the appeal briefs, also pending is Appellant's Motion for Reconsideration, entitled "Amended Notice of Appeal and Motion to Reconsider Appellant's Brief" [doc. No. 24].

I. Brief factual and Procedural History

The facts here are relatively straightforward, despite the protracted history of this litigation. In 1994, Appellee, Marlene H. Oliver and Appellant Hamid Mike Samadi signed a contract and note whereby Ms. Oliver agreed to pay $46,000.00 to purchase a piece of real estate property owned by Mr. Samadi. The terms of the agreement

required Ms Oliver to make monthly payments until November 15, 1995. On that date, the outstanding balance under the contract became due. Ms. Oliver made monthly payments through November 15, 1995; however, she was unable to meet the obligation of the remaining balance of $35,000 on that date. When Mr. Samadi threatened foreclosure, Ms. Oliver filed for bankruptcy protection.

On September 30, 1996, Ms. Oliver filed a voluntary Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Georgia. Judge Margaret H. Murphy approved a Chapter 13 payment plan on January 27, 1997, and the Debtor completed her obligations under the plan on July 19, 2000. Upon final report of the bankruptcy trustee, the court closed the estate and discharged the Debtor. However, on December 29, 2000, Ms. Oliver petitioned the court to reopen the case, claiming that Mr. Samadi refused to issue a quit-claim deed on Ms. Oliver's property, despite full payment through the Chapter 13 bankruptcy trustee.

In response to Ms. Oliver's petition to reopen the case, Mr. Samadi denied that he had been fully compensated under the Chapter 13 plan and asserted a counterclaim for a significant amount of money. Mr. Samadi claimed that Ms. Oliver debt had not been completely paid because the bankruptcy court had misinterpreted a proof of claim he had filed several years earlier. Both parties moved for summary judgment. On April 1 2002, the bankruptcy court denied Ms. Oliver's motion for summary judgment and granted, in part Mr. Samadi's motion for summary judgment. In granting that motion, the bankruptcy judge vacated an order issued nearly two years earlier, defining the amount of Ms. Oliver's debt to Mr. Samadi. Although not definitely assessing the amount owed Ms. Samadi, the court held that his secured claim was not fully paid in Mr. Oliver's bankruptcy case. Ms. Oliver appealed, but this court denied that appeal as untimely filed.

When the case returned to the bankruptcy court, it calculated the interest owed Mr. Samadi. Noting that Ms.

Oliver disputed his interest calculations on his claim, the court "computed the interest due based upon the terms of the loan":

> [Mr. Samadi's] claim as of November 15, 1995 was $35,000 and the interest rate is 14.5%. The interest on that claim through September 15, 2005, equals $30,868.79. [He] acknowledges payments from [Ms. Oliver] made after November 15, 1995, of $3,600 plus $35,261.41, leaving a balance due to [Mr. Samadi] as of September 15, 2005 of $27,007.38.

(Bankr. Order, 00-06893-MHM, September 29, 2005, at 2-3.) Strongly disagreeing with that interest calculation, Mr. Samadi filed a motion to amend judgment. The bankruptcy court denied that motion on November 9, 2005, on the ground that:

> The calculation of interest was based on a standard amortization of the principal of $35,000 at 14.5% interest over the relevant period of time. Although Mr. Samadi has presented several proposed calculations of interest on his claim, his methods of calculations have not be[en] explained and do not appear to comport with standard accounting methods.

(Bankr. Order, 00-06893-MHM, November 9, 2995 at 1.) The Bankruptcy court did, however, allow Mr. Samadi's claim for $6,497 in expenses, as provided for in the original promissory note between the parties. (Id.)

Continuing to disagree with this interest calculation, Mr. Samadi filed a motion for reconsideration, again challenging the bankruptcy court's calculation of the finance charge that accrued on his claim. Ms. Oliver also filed a motion for reconsideration of the award of fees and interest. The bankruptcy court denied both motions on February 24, 2006. As for Ms\r. Samadi's request for recalculation of interest, the court stated only that "postpetition interest was allowed ad calculated by amortizing the amount of the claim as of November 15, 1995 , $35,000, at 14.5% interest up to and including September 15, 2005." (Bankr. Order, 00-06893-MHM, February 24, 2006 at 1.) Mr. Samadi also requested for the

first time (in a response to Ms. Oliver's motion for reconsideration, apparently) that the court allow him to amend his expenses from $6,497 to more than $9,000, since he had neglected to include those expenses in his earlier report. The bankruptcy court denied that request.

Disregarding some confusion that is irrelevant to the present inquiry, the court notes that Mr. Samadi appealed the bankruptcy court's interest calculation.[1] In his November 21, 2005 Notice of Appeal filed in the bankruptcy court, he wrote that he was challenging that court's interest calculation, but did not mention that he was appealing the judgment of attorney's fees or any other expenses. He never amended that Notice of Appeal.

His case was originally docketed in this court on December 21, 2005, and a briefing schedule was set by this court on December 28, 2005. After a temporary stay so that the bankruptcy court could rule on the parties' motions to reconsider, Mr. Samadi timely filed his appeal brief in this court on September 11, 2006. After further confusion, which is again not relevant here, the court ordered that Appellee file a response no later than January 25, 2007, and that if Appellant wished to respond, he had until February 5, 2007. The court received both briefs in a relatively timely fashion, and the court is now prepared to rule on the merits of Mr. Samadi's appeal.

Unfortunately, even though the court told the parties that it would "likely decline to consider any pleading other than these two" (see Martin Order of January 11, 2007, at

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[1] Mr. Samadi's November 21, 2005 Notice of Appeal in the bankruptcy court is entitled, "Notice of Appeal from the Order Regard[i]ng Interest Calculation on Secured Loan." In its August 31, 2006 Order, this court indicated that Mr. Samadi appealed from the bankruptcy court's September 29, 2005 Order, since Mr. Samadi did not specify which Order he was appealing from, and that September Order did in fact address interest calculations. However, upon further review, it appears that Mr. Samadi was actually attempting to appeal from the bankruptcy court's November 9, 2005 Order, which modified the September 29 Order, and which also discussed the interest calculation.

8), Mr. Samadi nevertheless filed an Amended Notice of Appeal and Motion to Reconsider Appellant's Brief [Doc. No 24] on January 22, 2007. The court will consider the merits of Mr. Samadi's appeal, as well as his motion for reconsideration, below.

II. Analysis

A. Standard

On an appeal from a bankruptcy court, a district court "may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings." Fed. R. Bankr. P. 8013. The court will review conclusions of law *de novo*, but will not set aside findings of fact unless clearly erroneous. See In re Chase & Sanborn Corp., 904 F.2d 588, 593 (11th Cir. 1990) (citing In re Sublett, 895 F.2d 1381, 1383 (11th Cir. 1990)). As this court is acting in an appellate capacity, it may not make its own factual findings, and to the extent the "Bankruptcy court's findings are 'silent or ambiguous as to an outcome determinative factual question, 'remand to the bankruptcy court is required." Id. (quoting In re Sublett, 895 F.2d at 1384).

B. Merits of the Appeal Brief

In its September 29, 2005 Order, the bankruptcy court determined that Mr. Samadi was entitled to postpetition interest under 11 U.S.C. § 506(b). That statue provides:

> To the extend that an allowed secured claim is secured by property the value of which, after any recovery [from the trustee], is greater than the amount of such claim, and any reasonable fees, costs, or charges provided for under the agreement....

11 U.S.C. § 506(b). The terms of the original agreement provided interest at the rate of 14.5% per annum to be payable from the date of default.[2] The bankruptcy court thus calculated the interest owed through straight-line amortization of the original $35,000 claim at a rate of

14.5%, for the period from November 15, 1995 to September 15, 2005, totaling $30,868.79. Adding that amount to the principal, and subtracting Ms. liver's payment of $3,600, as well as her Chapter 13 Trustee's payment of $35,261.41, left $27,007.38 due on the claim. The agreement also provided for costs and attorney's fees, which the bankruptcy court also here allowed in the amount of $6,497. (Mr. Samadi contents the bankruptcy court's finding regarding his fees and expenses, which the court discusses infra II.C.) Mr. Samadi complains that the court's total finance charge calculation of $30,868.79 is far too low, considering that the interest rate was 14.5% and the time period was nearly ten years. Rather, he argues that the correct amount is closer to $50,000 that $30,000, and he provides several proposed spreadsheet calculation to prove it.

As this court cannot make its own findings of fact, the only question before the court is whether the bankruptcy court's total finance charge calculation of $30,868.79 is "clearly erroneous." The court finds that it is not. The bankruptcy court was required to determine the amount of interest as provided for under the agreement. Having found that Mr. Samadi's interest calculations did not comport with standard accounting methods, and further that Ms. Oliver disagreed with his calculations, the court simply determined the amount owed Mr. Samadi by using a straight-line amortization of his $35,000 claim at 14.5% from November 15, 1995 through September 15, 2005, a period of 118 months. Mr. Samadi does not see to understand how the court came to its total finance charge, seeming to suggest that the bankruptcy court

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[2] Neither parties designated the agreement on appeal as provided for by the Federal Rule of Bankruptcy Procedure, and it is therefore not before the court. See Fed. R. Bankr. P. 8006. Accordingly, the court takes the terms of the agreement from the bankruptcy court's September 29, 2005 Order.

made a mathematical error.[3]

However, the bankruptcy court's finding is simply the total amount of interest that would be owed over the relevant period had Ms. Oliver paid the amount pursuant to a regular monthly amortization schedule, beginning on September 15, 1995.[4] The court acknowledges that this interest calculations is imprecise in that it presumes regular monthly payments of $558.21- which clearly were not made here. However, the bankruptcy court calculated the total amount if interest owed in accordance with the statutory mandate of 11U.S.C. §506(b) – that is, by using the terms of the agreement. The bankruptcy court presumably felt that given the dispute over the correct interest amount and the irregular way Ms. Oliver actually made payments (pre- and postpetition), it would calculate what she would have owed Mr. Samadi over the same time period had the payments been in equal installments. While this calculation results in a lower total amount due to Mr. Samadi than he would like, it is not contrary to the terms of the promissory note, and is thus in accord with the statutory language.

The court acknowledges that Ms. Oliver's payments to Mr. Samadi were not regular as per the bankruptcy court's amortization calculation, and that Mr. Samadi's spreadsheets purport to address that issue by attempting to calculate the interest on a month-to month basis. But even assuming that it would have been improper for the bankruptcy court to calculate the interest in the manner it

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[3] For Example, Mr. Samadi writes, "Respectfully, the BK's [presumingly, "bankruptcy court's"] method of calculation has not been clear which has caused confusion for Samadi and his reason for filing repeated motions requesting to obtain the BK's method of arriving at the interest granted in the Order of September 28, 2005." (Appellant's Br. at 6.)

[4] Appellant may check the numbers himself by entering the relevant figures ($35,000 principal, 14.5% interest rate, 12 payments per year, and 118 regular payments) using the following online amortization calculator: http://ray.met.fsu.edu/cgi-bin/amortize (last checked April 8, 2007).

did if it had precise and accurate calculations before it, that court found that Mr. Samadi's multiple proposed calculations were not adequately explained and did "not appear to comport with standard accounting methods." (Bankr. Order, 00-06893-MHM, Nov. 9, 2005, at 1.)

The court agrees that Mr. Samadi did not meet his burden of showing to the bankruptcy court that his calculation was correct, and thus declines to find that its decision to disregard Mr. Samadi's calculations was "clearly erroneous." Mr. Samadi did not argue for a single "correct" interest calculation, but rather presented "several methods of finance charge calculations" to both this court and the court below. (Appellant's Br. 5.) One of those calculations, is the following: "10 yrs. *14.5%* $35,000.00 = $50,750.00." (Appellant Br. 5.) He describes this expression as the "simplest method of calculating interest over ten [] years (without consideration of amortization or daily accrual)." (Id. at 5.). Of course, the flaw in Mr. Samadi's own calculation (other than he uses a ten-year period rather than the correct 118-month period) is that it presumes that Ms. Oliver made no payments during that time period. Yet as the bankruptcy court noted, she made $3,600 in prepetition payments after November 15, 1995, and the bankruptcy trustee paid another $35,261.41 to Mr. Samadi.[5]

Of course, Mr. Samadi also offered more detailed (and

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[5] This is the same reason why his "Rule of 72" analogy fails a well. The "Rule of 72," simply put, is a mathematical principal providing that any sum invested at a 10% interest rate will double every seven years. Mr. Samadi argues that "considering the terms in this litigation where the interest rate is 14.5% which is a lot more than the 'rule of 72'... and the term had been 10 years[,]... the interest amount for the purpose of this litigation must be at minimum, more than the principal." (Appellant's Reply to Appellee's Resp. 1.) If Ms. Oliver had made no payments on her loan between November 15, 1995 and September 15, 2005, then Mr. Samadi would be absolutely correct. But that is simply not what happened. (See Bankr. Order 00-06893-MHM, Sept 29, 2005, at 3(noting that Ms. Oliver, by herself and through her trustee, made payments over relevant time period totaling $38,861.41).)

ostensibly more precise) measurements. His second proffered method of calculation was the "detailed calculations" he submitted on four separate occasions- April 2004, June 2004, August 2004, and January 2005. He also offered a third calculations that was shorter and, presumably, simpler. But given the conflicting calculations he presented to the court, and the fact that, at a minimum, his first method did not comport with standard accounting methods by failing to take into account the fact that Ms. Oliver and her trustee made payments on the principal, the court can not find that the bankruptcy court's decision to calculate the interest based on an amortization schedule, and in accordance with the terms of he agreement was clearly erroneous. As such, the bankruptcy court's interest calculation is AFFIRMED.

C. **Motion for Reconsideration**

> In its last Order, the court found that although Mr. Samadi attempted to address several issues in his September 11, 2006 Appeal Brief, his November 21, 2005 Notice of Appeal appeals the findings of the Bankruptcy Court's November 9, 2005 Order only, and Mr. Samadi never amended that Notice of Appeal. Thus, the only judgment of the Bankruptcy Court Mr. Samadi properly appeals from is that court's interest calculation, which in turn is the only issue this court will address.

(Martin Order of Jan. 11, 2007, at 9.) In other words, the court declined to consider Mr. Samadi's other argument on appeal – that the bankruptcy court erred in failing to argument his claim for legal expenses and fees. The court also stated that it would "likely decline to consider any pleadings other than" the parties briefs on appeal. (ID. 8) Nevertheless, Mr. Samadi filed a Motion for Reconsideration, in which he acknowledged his own failure to amend his Notice of Appeal but argued that "[i]t would be a grave injustice to Samadi... not to have [his] expenses

considered." (Am. Notice of Appeal and Mot. To Reconsider Appellant's Br. 2.)

For the reasons stated in its January 11 Order, the court need not consider Mr. Samadi's appeal of any issues other than those raised in his Notice of Appeal. Nevertheless, the court will briefly address his argument below, in the meager (but undoubtably futile) hope that it might help put this long-languishing matter to rest. In so doing, the court will assume no requirement on the part of Mr. Samadi to amend his Notice of Appeal, but will instead construe his November 21, 2005 Notice of Appeal as appealing not only the November 9, 2006 Order, but also the February 24, 2006 Order that denied his Motion for Reconsideration. For this purpose, therefore, Mr. Samadi's Motion for Reconsideration in this court is GRANTED as just-described, and his Motion to Amend his Notice of Appeal is DENIED.

Mr. Samadi points out that through the years of proceedings, beginning in 1995, he has accrued various legal fees and expenses. For that reasons, on November 9, 2005, the bankruptcy court allowed Mr. Samadi's expense request for $6,497, since they were provided for in the original promissory note between the parties. But Mr. Samadi later represented to the bankruptcy court that he had made an error in calculating those fees by ignoring a section of his incurred expenses. The bankruptcy court denied his request to amend, holding:

> [Mr. Samadi] asserts that his previous itemization and calculations omitted some of his expenses. Over the course of litigation in this adversary proceedings, [he] has received and has availed himself of numerous opportunities to provide the itemization and calculations of his expenses. [Mr. Samadi's] recent attempt to add more expenses is without sufficient foundation and detail. Additionally, a point comes when litigation must end. The point has been reached and passed.

(Bankr. Order, 00-06893-MHM, Feb 24, 2006, at 5.)

Again, this court does not make its own factual findings, but rather simply reviews the factual findings of the bankruptcy court for clear error. See In re Chase & Sanborn Corp. 904 F.2d at 593. In so doing, the court finds no clear error in the bankruptcy court's judgment with regard to his additional requested expenses. It found that Mr. Samadi had ample opportunity to proffer his attorney's fees but failed to do so in a timely fashion, and Mr. Samadi has not shown this court otherwise. Nor has he shown that the bankruptcy court's findings – that his "latest attempt to add more expenses [was] without sufficient foundation and "detailed" – is clearly erroneous. (Bankr. Order, 00-06893-MHM, Feb 24, 2006, at 5.) Accordingly, the court AFFIRMS expenses Ms. Oliver owes Mr. Samadi.

III. Conclusion

For the foregoing reasons, having found no clear error, the bankruptcy court's Order of November 9, 2005 and February 24, 2006 are AFFIRMED. Appellant's Amended Notice of Appeal and Motion to Reconsider Appellant's Brief [Doc. No. 24] is GRANTED IN PART and DENIED IN PART, as set forth above.

IT IS SO ORDERED, this 17th day of April, 2007.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE

ENTERED ON
MAR 15 2004
DOCKET
Doc. #61 & 62

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
MARLENE H. OLIVER	)	CASE NO. 96-75320-MHM
Debtor	)	

EXHIBIT A

MARLENE H. OLIVER	)	
Plaintiff	)	
	)	**ADVERSARY PROCEEDING**
v.	)	**NO. 00-6893**
MIKE SAMADI	)	
Defendant	)	

ORDER

Plaintiff filed the complaint commencing this adversary proceeding December 29, 2000. Plaintiff filed this adversary proceeding to compel Defendant to execute a quit claim deed releasing his claim against Debtor and real property of Debtor. Plaintiff asserts that Defendant's claim was satisfied by payments made through Debtor's Chapter 13 plan. Debtor had completed her Chapter 13 plan payments July 19, 2000. After her discharge was entered and the case closed, Debtor moved to reopen her case and filed this adversary proceeding to resolve the dispute remaining between Debtor and Defendant regarding the amount owed to Defendant.

Defendant filed the answer March 2, 2001.[1] Subsequently, both Plaintiff and Defendant have filed numerous motions in this adversary proceeding, including motions to dismiss and motions for summary judgment. An order was entered April 1, 2002, denying Plaintiff's motion for summary judgment. That order was appealed by Plaintiff, but that appeal was dismissed as untimely filed by order entered by the U.S. District Court December 9, 2002.

After dismissal of her appeal, Plaintiff filed the instant motion to dismiss. Plaintiff asserts the matters in dispute in this adversary proceeding can be resolved in a state court proceeding.[2] Defendant filed a response opposing dismissal on the grounds that dismissal of this adversary proceeding would result only in more delay and expense for Defendant.

Pursuant to F.R.C.P. 41, incorporated in Bankruptcy Rule 7041, after service of an answer by the adverse party, a plaintiff seeking dismissal must obtain either consent of all parties who have appeared in the action or an order of the court. Defendant does not consent to dismissal. As Plaintiff has set forth no substantive grounds for dismissal, and as the parties do not dispute that this court has jurisdiction to hear and resolve the parties' dispute, dismissal after the extensive litigation in which the parties have engaged in this adversary proceeding would be manifestly unjust. Therefore, Plaintiff's motion to dismiss will be denied.

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[1] Defendant, who is proceeding *pro se*, initially erroneously filed his answer in Debtor's main bankruptcy case. On March 2, 2001, Defendant timely filed his amended answer in this adversary proceeding.

[2] No such state court proceeding is currently pending.

In the order entered April 1, 2002, which, following dismissal of Plaintiff's appeal, became a final order, it appears this court failed to complete its calculations regarding Defendant's claim. The April 1, 2002 order found the following:

Defendant's claim as of 11/15/95	$35,000.00
Less prepetition payments made after 11/15/95	3,600.00
Plus accrued interest	29,401.99
Less amounts paid by Ch. 13 Trustee	35,261.41
Balance due	30,263.40
Plus expenses of collection	2,095.45

Therefore, based on those number, the outstanding balance owed by Plaintiff to Defendant was $32,358.90. The court is uncertain, however, of the date through which the accrued interest had been calculated.

In a statement of issues filed by Plaintiff pursuant to the court's instruction, Plaintiff questions whether Defendant is entitled to postpetition interest and to postdischarge interest. It appears the parties do not dispute that Defendant's claim was oversecured. Therefore, pursuant to 11 U.S.C. §506(b), Defendant is entitled to postpetition interest. The issue of whether Defendant is entitled to postdischarge interest appears to have been resolved against Plaintiff in the recent cases of *Universal American Mortgage Company v. Bateman*, 331 F.3d 821 (11th Cir. 2003). *See also*, *In re Telfair*, 216 F. 2d 1333 (11th Cir. 2000). Accordingly, it is hereby

ORDERED that Plaintiff's motion to dismiss is denied. It is further

ORDERED that, within 30 days of the date of entry of this order, Defendant shall file a statement setting forth:

- the date applicable to the amount of accrued interest set forth above;
- Defendant's calculation of the amount of interest which has accrued since that date up to and including March 31, 2004 (and how it is calculated);
- the per diem amount of interest accruing from and after March 31, 2004;
- an itemized list of any additional expenses of collection Defendant has incurred.

and shall serve that statement upon Plaintiff's attorney. Defendant must set forth all the figures on which he bases his calculations.

Within 20 days after service of Defendant's statement, Plaintiff may file objections to Defendant's calculations. If no objections are filed, an order may be entered without further notice or hearing. If an objection is filed, a hearing will be scheduled if an accurate resolution of the dispute appears to require a hearing. Otherwise, an order may be entered without further notice or hearing.

IT IS SO ORDERED, this the 9th day of March, 2004.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:
MARLENE H. OLIVER

Debtor

CASE NO: 96-75320-MHM

MARLENE H. OLIVER

Plaintiff

v.

MIKE SAMADI

Defendant

ADVERSARY PROCEEDING NO: 00-6893-MHM

EXHIBIT B

DEFENDANT'S MOTION TO AMEND
AMORTIZATION AND CLAIMS

COMES NOW, Mike Samadi, Defendant, *pro se*, respectfully submits his Defendant's Motion to Amend Amortization and Claims statement (previously submitted in March 31st, 2004 as Exhibit A) and presents the following:

COUNT I

On March 31st 2004, Defendant filed an Answer to the Court Order and itemized list of Principal, Interest, Late Fees, Cost and Expenses. In that Motion, Defendant presented Exhibit A which was four (4) pages of amortization of the claim for the real estate transaction. Now, Defendant prays that the Court will allow his Amended copy of the Exhibit A, since time has lapsed and that the dollar amount of the previous Exhibit A did not reflect the new calendar days and fees for the purpose of calculations and Judgment.

Although the entire concept and argument for the case remains the same, the only difference between the March 31st, 2004 and this Amended claim filing would be to reflect the new balance

On top portion of page 3 of the March 31, 2004, Defendant presented figures that are now reflecting the new balances. The old and the new amounts are presented as follow. In order

to differentiate between the old amounts and the new amounts, the Defendant presents the old (March 31, 2004 amounts) with a strike-through line. These figures are as follows:

Calculation as of March 31, 2004 (**OLD Calculation**):

~~Therefore the Principal and Interest as of March 31, 2004 is:~~	~~$57,391.53.~~
~~While the account was also accruing Late fees in the amount of~~	~~$ 2,250.00,~~
~~and cost of litigation and related fees since Jan. 2002~~	~~$ 975.00,~~
~~Totaling amount OWED to Defendant as of March 31, 2004 to be~~	~~$60,616.53.~~

Calculation as of July 05, 2004 (**New calculation**)

Therefore the Principal and Interest as of July 05, 2004 is:	**$59,622.09**
While the account was also accruing Late fees in the amount of	$ 2,550.00,
and cost of litigation and related fees since Jan. 2002	$ 1,225.00,
Totaling amount OWED to Defendant as of ~~March~~ July 5, 2004 to be	$63,397.09.

Defendant included extended pages of Exhibit A herein, showing calculations through first week of November 2004. However, Defendant is praying that the Court will enter its Order by July 05 2004. In the event, the Court does not enter the final Order by July 5, 2004, the additional calculations for the amounts Principal, late fees are presented on pages 5 through 7 of Exhibit A (attached herein).

COUNT II.

MOTION TO RECONSIDER HIS COUNTERCLAIM FOR DAMAGES

There is no change in Count II of the Defendant's Answer to the Court. However, Defendant again prays that the Court will hold all parties (Olivers) responsible for the damages.

WHEREFORE, Defendant prays that this Court will grant the following relief,

A. Grant the Dollar Amount owed to him for the Principal, Interest, Costs and Expenses of the Bankruptcy litigation;

B. Will enter and Order holding all Olivers (Sampson, Helen and Marleen) as Plaintiffs and parties of this Adversary;

C. Grant the Defendant's Summary Judgment for damages (compensatory, punitive damages) as indicated in his Amended Claim and Summary Judgment filed in August 2001 for the amount of $337,557.74;

D. Grant judgment for liquidated and treble damages;

E. Grant any other and further relief this Court deems just and proper.

9/12/05 — 10/17/05
d MD. Jennet Washington / Colleen Dupuy (2nd 39 Copy
w/ Alexan Asst for Judicial Assist.)
Dupuy Dotson (Relief Deputy)
asked for Calculation / Formula which the ct. Readred such
rest. Each time it was either ← NORTHERN DISTRICT OF GEORGIA
told to figure it out - it is in the order ATLANTA DIVISION
Contact an attorney.

ENTERED ON
SEP 29 2005
DOCKET

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IN RE:

MARLENE H. OLIVER

Debtor

CHAPTER 13

CASE NO. 96-75320

EXHIBIT C

MARLENE H. OLIVER

Plaintiff

v.

HAMID MIKE SAMADI

Defendant

ADVERSARY PROCEEDING
NO. 00-6893

ORDER REGARDING DEFENDANT'S CLAIM

This adversary proceeding is before the court following remand from an appeal to the U.S. District Court. The parties have submitted various pleadings addressing the issues which were not fully resolved in prior orders in this adversary proceeding. Based upon the parties' pleadings the facts are undisputed.

Plaintiff asserts that Defendant is not entitled to postpetition interest on his claim. As set forth in a prior order, however, the value of the real property that secures Defendant's claim exceeds that principal amount of Defendant's claim. Therefore, pursuant to 11 U.S.C. §506(b), Defendant is entitled to postpetition interest. Defendant is not entitled, however, to augment his claim by the addition of late charges and expenses because the written agreement between the parties does not

agreement does provide for Legal & Attorneys Fees

provide for such charges and expenses. Section 506(b) expressly provides that such charges and expenses must be provided for in the agreement under which the claim arose.

Plaintiff also appears to suggest that the entry of Plaintiff's discharge should have cut off Defendant's right to post-discharge interest. That issue was resolved against Plaintiff in the case of *Universal American Mortgage Co. V. Bateman*, 331 F 3d 821 (11th Cir. 2003). *See also In re Telfair*, 216 F. 3d 1333 (11th Cir. 2000). Plaintiff appears to suggest that *Bateman* should not apply in this adversary proceeding because it was decided after this adversary proceeding was filed. Plaintiff offered no legal argument or citation to statutory or case law to support that assertion. The argument lacks merit.

Defendant appears to seek imposition of punitive damages. Defendant alleges insufficient grounds to award punitive damages against Plaintiff for failing to timely repay the loan from Defendant. Defendant is compensated for the time value of the funds by the allowance of interest. Mere breach of contract does not support a claim for punitive damages. *Young v. Turner Heritage Homes, Inc.*, 241 Ga.App. 400, 526 S.E.2d 82 (1999). Any tort claim that arose postpetition which Defendant may seek to assert against Plaintiff or her attorney may be pursued in state court. Defendant also seeks to graft onto his secured claim an unsecured claim in the amount of approximately $2,700. That unsecured claim was discharged and is unenforceable.

Plaintiff disputes Defendant's calculations of interest on the claim. Therefore, the undersigned has computed the interest due based upon the terms of the loan.

Defendant's claim as of November 15, 1995 was $35,000 and the interest rate is 14.5%. The interest on that claim through September 15, 2005, equals $30,868.79. Defendant acknowledges payments from Plaintiff made after November 15, 1995, of $3,600 plus $35,261.41, leaving a balance due to Defendant as of September 15, 2005 of $27,007.38. Accordingly, it is hereby

ORDERED that the amount of Defendant's secured claim which remains unpaid and fully secured is $27,007.38.

IT IS SO ORDERED, this the 28th day of September, 2005.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

This is the Referenced EXHIBIT A pg 1 & pg 2 in 11th Cir.

Brief was filed on 9/11/06 attached.

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IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRCT OF GEORGIA
ATLANTA DIVISION

This is 10/17/05

IN RE:	10/2/05 CHAPTER 13
MARLENE H. OLIVER	CASE No. 96-75320
Debtor	Compilation. Review of Doc. 5 Cases

73

Doc. #

MARLENE H. OLIVER

Plaintiff

v.

HAMID MIKE SAMADI

Defendant

EXHIBIT D

ADVERSARY PROCEEDINGS NO. 00-6893

DEFENDANT'S MOTION TO AMEND JUDGEMENT

COME NOW, Mike Samadi, prose Defendant and files his Defendant's Motion to Amend Judgment and present to the Honorable Court the followings:

This Motion is being filed due to:

a. the Defendant's review of the calculation of interest in the Order of September 29, 2005;

b. the terms of agreement indicated the legal fees and grant such fees;

c. and the time delivery/receipt of the Order.

COUNT I

CALCULATION OF INTEREST

Defendant is not clear as to the method in which the Court arrived to the interest of $30,868.79 for the period of November 15, 1995 through September 15, 2005 **(nearly 10 years)**.

In the Order, the Court noted the principal at the initial date of filing the Bankruptcy Petition (September 15, 1995) to be $35,000.00. The Court also noted the interest rate at 14.5% as stated in the Agreement between the parties. If the Court allows, Defendant presents three methods of calculation of interest, so that he could show the interest calculated does not consider with the principal and length of time such interest is calculated. They are as follows:

a. If we consider straight calculation of interest for the entire period (approximate 10 years), without ANY consideration of annual amortization, then the interest **for the 10 years would be approximately $50,750.00**.

b. If we consider annual accrual of the interest as allowed by law, while applying all payments as lenders, banks and mortgage companies would have applied, then the interest for the period would be much higher. A simple example of such Interest calculations are listed below.

Year	Principal on Nov. 15 ea. yr.	Rate	Yrly. Accrued Interest	Pymts.
1995	$35,000.00	14.50	$5,075.00	$3,600.00
1996	$36,475.00		$5,288.88	
1997	$41,763.88		$6,055.76	
1998	$47,819.64		$6,933.85	
1999	$54,753.48		$7,939.26	$35,261.41
2000	$27,431.33		$3,977.54	
2001	$31,408.87		$4,554.29	
2002	$35,963.16		$5,214.66	
2002	$41,177.82		$5,970.78	
2004	$47,148.60		$6,836.55	
2005	$53,985.15		$7,827.85	
		Totals	**$65,674.40**	

In the spreadsheet provided above, it immediately deducts the $3,600.00 paid during the first year of default. Then, it applies the interest an annual basis. Finally and since the payment dates and amounts made by Trustee were scattered throughout the years, Defendant applied all payments made to the mid year of the Chapter 13 cycle (as an

years, Defendant applied all payments made to the mid year of the Chapter 13 cycle (as an average for simplicity purpose).

c. It cannot become any simpler, fairer or easier to calculate the interest on **Annual basis** while applying all the payments made by the Plaintiff or the Trustee Accordingly (as was provided previously). The calculation provided to the Court (Exhibit A, pg1 and top of pg. 2) attached to Defendant's Answer to the Court Order and Motion to Reconsider His Counterclaim for Damages (dated March 31, 2004) filed in April 3, 2004, would have been the simplest method. Considering the interest Calculation methods that mortgage companies and banks (using daily accrual method), Defendant's calculation has been beyond fair, reasonable and just.

Defendant feels slighted by the Order. It is not clear how the Court arrived to the amount of $30,868.79 for almost ten (10) years of interest at the rate of 14.5% when straight line calculation of interest (with no consideration to annual amortization) for the entire 10 years EVEN AT 10% rate would be $35,000.00.

Defendant has fairly calculated the interest for the period as he displayed the same on his Exhibit A (referenced in paragraph c. above). To be fair to the Plaintiff, he did not even apply interest on the spreadsheet where it could have been accrued daily (as banks and mortgage companies would have) and he applied payments when made and pre-interest calculation.

THEREFORE, Defendant prays that the Court considers the length of time since the petition was filed and use a method that at minimum would allow some justification as to all years (annual)

COUNT II

LEGAL FEES

In previous motions, to include Defendant's Answer to the Court Order (referenced above), which was filed in April 2004, Defendant presented the fact that the original contract between the parties allowed collection of legal fees. This issue was presented to the Court in several motions. However, the Court has not addressed that fact at all.

The legal fees was last discussed with the filing of Defendant's Motion to Dismiss Plaintiff's Objection, Plaintiff's Amended Objection and Motion to Allow Late Filing (dated May 19, 2004). Along with this motion Defendant attached an Exhibit referenced as Creditor's Witness-1 Exhibit B, which is a copy of the Real Estate Note.

On the forth paragraph of this Exhibit it clearly states:

> *"In case this note is collected by law...including fifteen per cent 15% of the principal and interest as attorney's fees..."*

Defendant never claimed to be an attorney nor attempted to collect any rate as attorneys would. However, Defendant had to retain an attorney to pursue foreclosure (pre-petition), then had to consult with two attorneys in order to continue with the proceedings of the Petition, and most importantly had to receive legal research assistance and preparation of all motions and proceedings in this Adversary matter; as well as, the initial Petition. If an attorney had been involved, his/her fees would have been in excess of $20,000.00 (especially since two attorneys were interviewed when the Plaintiff filed Appeal from the decision of this Court) and the attorney offered legal services for the Appeal proceedings at a cost of $8,500.00 and $10,000.00

Defendant again feels he has been dealt unjustly, when at no fault of his, he paid attorneys fees for foreclosure proceedings, consultation, legal services, search and preparation of documents and motions. The total fees charged to Plaintiff does not even near the amount of

15% of the principal as was authorized in the Real Estate Note and Agreement. In *Bank of Early v. Brown*, the Supreme Court ruled in favor of Creditors to collect attorney and legal fees.

Defendant is suffering these costs at no fault of his own but the Plaintiff. Plaintiff could have taken the settled offer years ago when Sampson Oliver and Samadi communicated before Plaintiff's appeal was filed and then again after the appeal was dismissed. However, Olivers refused, after negotiating the settlement amount down three times. Furthermore, if an attorney was representing the creditor, the cost of this litigation since 1996 would have sky rocketed; therefore, would have definitely effected debtor financial more.

Defendant cannot suffer the losses when the Agreement called upon such expenses and costs. Hence the expenses of this entire litigation since 1996 is presented again as follows as was presented in the Exhibit (discussed in Count I, item c (above)):

a. $2,791.75 (Pre-Petition)

b. $1,95.25 (Pre-Adversary until)

c. $1,575.00 (from 9/2001 through 3/31/04)

d. $ 175.00 (from 6/2005 through this proceedings)

Total $6,497.00

THEREFORE, Defendant again begs the Court to reconsider the terms of the agreement and grant the legal fees Defendant suffered in the amounts $6,497.00.

COUNT III

TIME DELIVERY AND RECEIPT

OF THE COURT ORDER

Since the previous Court Order (dated March 9, 2004), Samadi has been in contact with the Clerk of the Court and the Courtroom Deputy in order to obtain information whether an

Order was entered as a result of Defendant's Motions and submission of the amortized statement of claims. Defendant has patiently waited to receive an Order, hoping to conclude this matter.

On September 29, the last Order of the Court was docketed. However, this Order was NOT mailed until a MUCH later date and was ~~did~~ not received until October 11, 2005. Although the choice delivery service of the Court is the United States Postal Service, regular presorted delivery; however, it is not postmarked; therefore, it is NOT clear when this Order was mailed. This action places the defendant at a disadvantage and creates issues **IF** Defendant was planning to pursue the matter through an Appeal.

Again, Defendant feels slighted by the party that mailed this Order to him. Defendant is attaching a copy (of the envelope and the Order in which he received) herein and references hereto Exhibit B, to show the delivery method has been unjust, disabled Defendant and denies defendant his constitutional right to a fair and unbiased litigation.

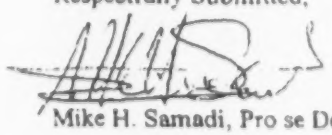
WHEREFORE, Defendant prays that the Court grants this Motion to Amend the Order and enter an Order as followings:

A. Granting a method of calculation of interest that is allowed by the Bankruptcy laws for the period of Ten (10) years;

B. Granting Legal fees and expenses;

C. Ordering the sender of the Court Order to forward such document appropriately which would give defendant sufficient time to respond .

Respectfully Submitted,



Mike H. Samadi, Pro se Defendant

4555 Bettys Branch Way
Evans, GA 30809
(706) 447-4448

CERTIFICATE OF SERVICE

This is to certify that I have this day served the parties below with a copy of the forgoing matter by depositing the same in the United States Mail in a properly addressed envelop with adequate postage thereon:

C. David Butler
Office of the U.S. Trustee
Richard Russell Bldg.
75 Spring Street, SW
Atlanta, GA 30303

Marleen Oliver
1826 Glenhill Place
Decatur, GA 30032

J.L. Jordan
2565 Jolly Rd., Ste 100
College park, GA 30349

This 12th day of October 2005.

Mike H. Samadi

4555 Bettys Branch Way
Evans, GA 30809
(706) 447-4448

11/15/05 Called ... Jared spoke Tunica K ; ton. He said he will call Sapson & call me Back. Transfered me Back to Secretary to leave Phone #.

05 @ 9:20Am called Ms. Pat Sinclair (law clerk of Hon. Marg. Murphy) about interest cal. (left msg

05 @ 2:10pm called her again & left another msg

@ 11:15Am called & spoke Ms. Wdg, I "we can't help you, you should know ow attorney should have been cal. consult w/an ney." I said "I did". she asked for names. I told her Brad Pat. Gainesville & local in Lilburn). Again she repeated that "we can't help you, you need to talk w/attorney, we can't advise you" I asked my question & don't you advise, just curious Know what used pc method used to ca

ENTERED ON

NOV 09 2005

DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
MARLENE H. OLIVER	)	CASE NO. 96-75320-MHM
	)	
Debtor	)	DOC. # 75
	)	
MARLENE H. OLIVER	)	
	)	
Plaintiff	)	
v.	)	ADVERSARY PROCEEDING NO. 00-6893
	)	
MIKE SAMADI	)	
	)	
Defendant	)	

10 Yrs, 14.5% on $35K

No Cop. Concluded have a Bad day, Thx

EXHIBIT E

ORDER ON DEFENDANT'S MOTION TO AMEND JUDGMENT

Defendant filed a motion to amend the order entered September 29, 2005, in which the amount of Defendant's claim and the amount of accrued interest was calculated. Plaintiff failed to filed a response.

The calculation of the interest was based on a standard amortization of the principal of $35,000 at 14.5% interest over the relevant period of time. Although Mr. Samadi has presented several proposed calculations of interest on his claim, his methods of calculation have not be explained and do not appear to comport with standard accounting methods.

With respect to Defendant's entitlement to add legal fees and expenses to his claim, Defendant has referred the undersigned to the promissory note, which does, indeed, provide for payment of legal fees and expenses. Therefore, the expenses itemized by Defendant, which total $6,497, will be allowed.

BEST AVAILABLE COPY

Finally, Defendant complains that he did not receive the order entered September 29, 2005, until October 11, 2005, after time for filing a notice of appeal had already expired.[1] Plaintiff has also filed a motion to extend time for filing a notice of appeal on the same grounds. The docket shows the order was entered September 29, 2005, and was served October 1, 2005. Although ten days for the U.S. Postal Service to deliver mail is not unheard of, it is unusual. Both Defendant and Plaintiff offer only their allegations that the order was not received until October 11, 2005. The presumption of proper notice cannot be rebutted solely by allegations of non-receipt. *Moody v. Bucknum*, 951 F.2d 204 (9th Cir. 1991). *See also Konst v. Florida East Coast Railway Co.*, 71 F. 3d 850 (11th Cir. 1996). Nevertheless, the entry of this order, which amends and restates the order entered September 29, 2005, effectively provides both parties with additional time to perfect an appeal. Accordingly, it is hereby

ORDERED that the findings of fact and conclusions of law set forth in the order entered September 29, 2005, are incorporated by reference into this order except that Defendant is allowed as a part of his secured claim the additional amount of $6,497. Thus, the amount of Defendant's secured claim which remains unpaid and fully secured is $33,504.38.

The Clerk, U.S. Bankruptcy Court, is directed to **hand-serve** a copy of this order upon counsel for Plaintiff and upon Defendant.

IT IS SO ORDERED, this the 8th day of November, 2005.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

---

[1] Additionally, to toll the deadline for filing the notice of appeal, a motion to amend the judgment must be filed within the same ten-day period. Therefore, although Defendant's motion to amend is timely under Bankruptcy Rule 9024, it was insufficient to toll the deadline for filing a notice of appeal.

Dear Mark: This was sent on 11/16/05, Recorded on 11__ 05, but plaintiff hand to delivered Motion to Reconsidered on 11/18/05. Therefore Bankruptcy Court treated Notice of Appeal for Reasons: (1) was filed out-of-time (see order of 11/4/05 ... long ston (2) MTR was filed then Appeal is Moot.

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRCT OF GEORGIA
ATLANTA DIVISION

11/16/05
25.00
$50.00

IN RE:

MARLENE H. OLIVER

Debtor

CHAPTER 13 — This is 11/16/05

CASE No. 96-75320

Doc. # 78

Regarding Doc. 71

MARLENE H. OLIVER

Plaintiff

v.

HAMID MIKE SAMADI

Defendant

ADVERSARY PROCEEDINGS
NO. 00-6893

Ask BK clerk for a certified copy of Envelop

NOTICE OF APPEAL FROM THE ORDE

EXHIBIT F

REGARDNG INTEREST CALCULATION ON SECURED LOAN

COMES NOW, Mike Samadi, prose Defendant and files his Notice of Appeal Regarding Interest Calculation on a Secured Loan from the Honorable Bankruptcy Court and request that the issue be resolved by a review of the Honorable District Court.

The Honorable Bankruptcy Court recognized the principal amount in which the Interest must be calculated, is Thirty-Five Thousand Dollars ($35,000.00). The Court also noted that the interest rate on the loan to secure the debt is 14.5% annum. The Court further noted the period of default in which the finance charges must be applied is from November 15, 1995 through September 15, 2005. However it is not clear the accounting method in which the Honorable Court used to arrive to an amount of $30,868.79 interest for a period of nearly ten (10) years. In Defendant's Motion to Amend Judgment filed in October 2005, Defendant begged the Court in

order to present the accounting method in which the Honorable Court arrived to this figure; however, the Court did not make a clear reference to calculation other than stating;

> *"The calculation of the interest was based on a standard amortization of the principa $35,000.00 at 14.5% interest over the relevant period of time."*

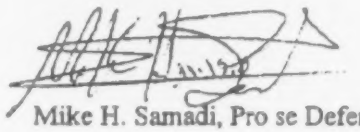
This does not clear how the calculation of interest was arrived or what type of formula was used. Moreover, in the same paragraph, the Court noted;

> *"Although Mr. Samadi has presented several proposed calculations of interest on his claim, his methods of calculation have not explained and do not appear to comport with standard accounting method."*

Defendant respectfully feels that he did explain his methodds in detail and even stated that straight line calculation of interest for a time frame (NOT INCLUDING ANY DAILY OR ANNUAL AMORITIZATION) is in the amount $50,750.00. Moreover, Defendant described his methods in detail ever since March 2004, by presenting spreadsheets of the calculations.

WHERFORE, Defendant prays that the Honorable District Court would review the Order of the Honorable Bankruptcy Court and grant an Order that would coincide with the fair calculation of interest on the balance of $35,000.00 at a rate of 14.5% (per contract) for the period of nearly ten years (as the Honorable Bankruptcy Court noted).

Respectfully Submitted,



Mike H. Samadi, Pro se Defendant

4555 Bettys Branch Way
Evans, GA 30809
(706) 364-0555

Sept 11 2006

53

D.C. Rec. 13

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HAMID MIKE SAMADI APPELLANT/Defendant	
v.	**CIVIL ACTION NO. 1:05-CV-3231-BBM** **BANKRUPTCY CASE NO.:**
MARLENE H. OLIVER	**96-75320-MHM** Adversary Case No. 00-6893
APPELLEE/Plaintiff	

EXHIBIT G

BREIF

COMES NOW, Samadi, Pro se Appellant respectfully files his Brief before this Honorable Court and presents the followings:

I. BACKGROUND

This is a case involving Bankruptcy matter initiated in 1996, discharged in June of 2000. This matter has continued through Adversary proceedings since December 2000. During the first steps of adversary proceedings, the Honorable Bankruptcy Court vacated (correctly) the discharge after reviewing all the documentation (which was filed but not in the Court's file for review at the time the Discharge was Ordered, 6/2000).

This matter has been before this Honorable Court on similar grounds (Creditor's rights to receive interest, fees and other claims) from April 2002 through December 2002. After citing issues relating to creditor's right to receive interest, this Honorable Court Ordered that Samadi is entitled to interest and fees. The Court also noted that Samadi's other claim was not resolved. Therefore the matter was remanded to the Honorable Bankruptcy Court for review and Order was consistent with the findings of this Court.

I. STATEMENT OF CASE

Although the Honorable Bankruptcy Court granted in part (two out-of three of Samadi's claims for this Adversary Proceedings); however, that Court's calculation of interest is "FAR-A-PART" from Samadi's calculations. Samadi was not certain since the Honorable Bankruptcy Court's (hereinafter "BK") calculation of interest seemed distant from methods introduced to Samadi by financial institutions. Samadi consulted with bankruptcy attorneys and an accountant for review and assistance in reaching the BK's figure. Therefore, Samadi begged the BK for an explanation as to the method that was used to arrive at the amount granted and/or grant his amendment of the amounts requested. The Bankruptcy Court denied Samadi's motions.

NOW, the issue before this Honorable Court relates to the calculation and granting of

A. Interest, and

B. Legal Fees.

I. LIST OF MOTIONS AND ORDERS RELATING TO THIS MATTER AND A SUMMARY DESCRIPTION

1. On Mar 15, 2004, the Honorable BK granted Samadi's request for interest, expenses and fees. The BK Ordered calculation up-to and including 3/14/04, per diem interest after 3/4/04, and an itemized list of expenses and collection costs. (BK Doc. No. 61)

2. Samadi answered the Order and also filed motion to reconsider (hereinafter "MTR") (BK Doc. No. 63). Oliver filed motion to allow late filing (BK Doc. No. 64). Oliver objected to Samadi's calculation (BK Doc. No. 65), Oliver amended objection (BK Doc. No. 66); therefore, Samadi filed a motion to dismiss ("MTD") Oliver's objection (BK Doc. No. 67).

3. Since several months had passed, and Samadi's calculations "per diem" was out-of-date; therefore, Samadi resubmitted calculations to include new months. Samadi filed motion to amend amortization (BK doc. no. 68 on 6/17/04). Samadi motioned for summary judgment (BK doc. no, 69). Then again several months passed and Samadi extended the amortization in

January 2005 (BK doc. no, 70);

4. The BK Ordered, granting Samadi's secured claim, denying Samadi's unsecured claim and counterclaims were entered on 9/28/05 (BK doc. no. 71), certificate of service (BK doc. 72). Samadi could not have filed appeal since, the Order reached all parties late and parties raised the late arrival issue with the BK (BK doc. no. 71, pg 2, pp 1). As a result;

5. Samadi filed motion to amend Judgment regarding interest calculation and corrected calculation of legal and collection fees (BK doc. no. 73 on 10/17/05) hoping that the BK would reconsider, continue with the due process of the law, or that it would initiate a new period to file notice of appeal. Meanwhile and nearly a month later, Oliver filed a motion for extension of time to file notice of appeal (dated 10/25/05) (BK doc. no. 74). As a result, Order denying Samadi's motion to amend was entered (BK doc. no. 75, dated 11/09/05) and BK certified the Order (BK doc no. 76).

6. On 11/18/05, Oliver filed MTR post petition interest AGAIN (BK doc. no. 77) and few days later filed amended MTR. However, a day before, Samadi forwarded notice of appeal which was docketed days later (11/21/05) (BK Doc. No. 78). As a result of Samadi's notice of appeal, the BK Clerk terminated all pending motions. Samadi became confused and responded to the BK by first requesting extension of time, which the BK granted in part on 12/16/05 (BK Doc. no. 90). Then Samadi filed a series of motions (MTR, motion to dismiss Plf's MTR and to ADD second party plaintiff [naming Sampson Oliver as co-plaintiff]), (BK doc. no. 91 & 92).

7. Ever since this Order, Oliver has been one step behind and filed repeated motions after the BK's Order was entered. For example, on 12/16/05, the BK granted Samadi's late filing and did not make any ruling on Samadi's MTR, MTD, etc, as well as Oliver's MTR; yet, Oliver filed objection to Samadi's late filing motion on 1/13/06 and then continued with objections to Samadi's MTR, etc.

8. At this time Samadi became seriously confused as to the direction the matter was taking, especially with Oliver's repeated motions. Therefore, Samadi filed his motion with this Honorable Court requesting Stay or nullification (US Crt. Doc. No. 3 filed in 1/13/06), in which this Court Granted the stay requested (3/14/06).

9. On February 24, 2006, the BK Order was entered which denied all pending motions (BK doc. no. 101 & 102). However, two days prior to this motion being docketed, Samadi forwarded his objection to Oliver's motion for extension of time to file notice of appeal. At that time Samadi also filed his motion for summary judgment (BK doc. no. 103). Certainly #103 is mooted even if it was not docketed until days after the Order of 2/24/06 (Doc. # 101 & 102).

10. Even though the BK's Order reached Mr. Oliver on time, Mr. Oliver continued with the matter and filed other motions yet, several months later, he never filed any notice of appeal. Thus far, Oliver has filed two (2) motions for extension of time to file notice of appeal (10/05 and 3/06) (last one is BK doc. no. 106). Therefore, if Mr. Oliver files any Notice of Appeal it would be well out-of-time.

Now Samadi presents the facts of his appeal as follows:

I. STATEMENT OF FACTS

1. DELIVERY TIME

Unfortunately since receipt of most of the BK's Orders takes longer than anticipated; therefore, Samadi had to rush his notice of appeal to preserve time. The issues regarding receipt and delivery of Orders were presented in several pleadings before the BK.

2. **INTEREST CALCULATION.**

Throughout the years of these proceedings before the BK, Samadi forwarded repeated amortization of the same initial principal. However, each time as time would pass, Samadi would expand his calculation to include recent months of interest and fees.

In the September 28, 2005, Order, the Honorable BK acknowledged the principal amount of $35,000.00. It further acknowledged the interest rate of 14.5% and also included the period of November 15, 1996 through September 15, 2005. Although it seems that the Honorable BK did not effectuate the interest calculation along with payments made; however, the Court arrived at a total finance charge of $30,868.79 for a period of nearly ten (10) years. In Samadi's motion to amend judgment (BK Doc. no.73) (attached herein and referenced hereto Exhibit A) and later in MTR (attached herein and referenced hereto Exhibit B), Samadi presented several methods of finance charge calculations and argued that even at the simplest method of calculating interest over ten (10) years (without consideration of amortizing or daily accrual) the that calculation of

10 yrs. * 14.5% * $ 35,000.00 = $50,750.00

Samadi argued the amount of $50,750.00 is a flat calculation without regards to any method of accrual (non whatsoever) (please see Exhibit A, pg 2, pp (a.) and Exhibit B pg 4, Count II).[1]

Samadi also presented two other methods. One method (second way) was the detailed calculations listed on the amortization he submitted to the Court in April, 2004, June 2004, August 2004 and January 2005. This list included the initial principal the day of default, interest calculation thereafter until the petition was filed and the payments received during

---

Footnote 1

Due to the volume of the entire motions presented to BK (BK Doc. No. 73 and 92), only pages of those motions are marked herein as Exhibit A, B, and C).

that time. Then it calculated interest for the period of 60 months for the petition period and applied payments received from the Trustee. By applying Trustee's payments, Samadi averaged the months in which payment was received and entered the payments as of 1999, (median) to reduce the massive calculation pages of daily interest and meanwhile offset the payment (being fair to both parties). It then continued interest calculation **per month (not per diem) from the date of discharge until recent days of this proceedings** (again being beyond fair to Oliver and as allowed by law). Moreover, Samadi itemized all the expenses of litigation and collection.

The third (other) method was a shorter version spreadsheet submitted in Exhibit A pg. 2 under parg. (b).

However, the Court discarded all of these methods and discarded the fact that ever since the petition date (11/15/1996) the finance charges should have accrued.

Respectfully, the BK's method of calculation has not been clear which has caused confusion for Samadi and his reason for filing repeated motions requesting to obtain the BK's method of arriving at the interest granted in the Order of September 28, 2005. The BK's Order was shown to bankruptcy attorneys and an account in which none were able to arrive at the amount of the BK's Order.

Samadi yet presents another method as follows. In this method Samadi even amortized all payments in debtor's favor, yet calculated the interest on a monthly basis (instead of per diem, as allowed by law) again favoring Debtor. The contract expired on 11/16/1996 at 12:01AM. At that time, the balance was $35,000.00.[2] It is as follows:

Footnote 2
The method presented herein extremely discriminated against Samadi. However, it is shown so that the Courts would be able to view that the balance herein would still be much higher that BK's Order of 9/28/05. A true calculation as the BK would be the method in which BK requested (Per Diem), which is not done herein.

Trans Dt.	Intrst. $	Pymt. $	Balance $	Description
11/16/95	0.00	0.00	35,000.00	Date of default.
12/15/95	422.92	0.00	35,422.92	
01/15/96	428.03	600.00	35,250.94	
02/15/96	425.95	600.00	35,076.89	
03/22/96	423.85	1,200.00	34,300.74	
04/15/96	414.47	0.00	34,715.21	
05/05/96	415.67	1,200.00	33,930.87	
06/15/96	410.00	0.00	34,340.87	
07/15/96	41495	0.00	34,755.82	
08/15/96	419.97	0.00	35,175.79	
09/15/96	425.04	0.00	35,600.83	
09/30/96	215.09	0.00	35,815.91	Previously Samadi had a $216 error which is now corrected
09/30/97	5,193.30	5,237.79	35,771.43	1st year of petition. Trustee pymt. of 3/97 thru including 09/97
09/30/98	5,186.86	7,269.91	33,688.37	2nd yr of petition. Trustee pymt 10/97 thru & including 09/98
09/30/99	4,884.81	5,801.21	32,771.98	3rd yr of petition. Trustee pymt 10/98 thru & including 09/99
06/30/00	4,251.94	7,899.68	29,624.23	4th yr of petition. Trustee pymt 10/99 thru & including 09/00
				The $4251.94 interest is on 9 months basis
06/30/00				Petition Discharged
08/00	715.20	9,589.03	20,751.12	2 months of Intrst., Post Petition pymt. gives new balance.

Now if we apply interest in a monthly accrual basis, we will conclude the following:

Month	Prev. Bal.	rate/month 14.5%/12	Interest	New Bal.	Description
					All of these are post petition
Sep-00	$20,751.12	= 0.01208	$250.74	$21,001.86	calculation
Oct-00	$21,001.86	0.01208	$253.77	$21,255.64	
Nov-00	$21,255.64	0.01208	$256.84	$21,512.47	
Dec-00	$21,512.47	0.01208	$259.94	$21,772.42	
Jan-01	$21,772.42	0.01208	$263.08	$22,035.50	
Feb-01	$22,035.50	0.01208	$266.26	$22,301.76	
Mar-01	$22,301.76	0.01208	$269.48	$22,571.24	
Apr-01	$22,571.24	0.01208	$272.74	$22,843.98	
May-01	$22,843.98	0.01208	$276.03	$23,120.01	
Jun-01	$23,120.01	0.01208	$279.37	$23,399.38	
Jul-01	$23,399.38	0.01208	$282.74	$23,682.12	
Aug-01	$23,682.12	0.01208	$286.16	$23,968.28	
Sep-01	$23,968.28	0.01208	$289.62	$24,257.89	
Oct-01	$24,257.89	0.01208	$293.12	$24,551.01	
Nov-01	$24,551.01	0.01208	$296.66	$24,847.67	
Dec-01	$24,847.67	0.01208	$300.24	$25,147.91	
Jan-02	$25,147.91	0.01208	$303.87	$25,451.78	
Feb-02	$25,451.78	0.01208	$307.54	$25,759.32	
Mar-02	$25,759.32	0.01208	$311.26	$26,070.58	

Apr-02	$26,070.58	0.01208	$315.02	$26,385.60	
May-02	$26,385.60	0.01208	$318.83	$26,704.43	
Jun-02	$26,704.43	0.01208	$322.68	$27,027.11	
Jun-02	$27,027.11	0.01208	$326.58	$27,353.68	
Aug-02	$27,353.68	0.01208	$330.52	$27,684.21	
Sep-02	$27,684.21	0.01208	$334.52	$28,018.73	
Oct-02	$28,018.73	0.01208	$338.56	$28,357.28	
Nov-02	$28,357.28	0.01208	$342.65	$28,699.94	
Dec-02	$28,699.94	0.01208	$346.79	$29,046.73	
Jan-03	$29,046.73	0.01208	$350.98	$29,397.71	
Feb-03	$29,397.71	0.01208	$355.22	$29,752.93	
Mar-03	$29,752.93	0.01208	$359.51	$30,112.44	
Apr-03	$30,112.44	0.01208	$363.86	$30,476.30	
May-03	$30,476.30	0.01208	$368.26	$30,844.56	
Jun-03	$30,844.56	0.01208	$372.71	$31,217.26	
Jul-03	$31,217.26	0.01208	$377.21	$31,594.47	
Aug-03	$31,594.47	0.01208	$381.77	$31,976.24	
Sep-03	$31,976.24	0.01208	$386.38	$32,362.62	
Oct-03	$32,362.62	0.01208	$391.05	$32,753.67	
Nov-03	$32,753.67	0.01208	$395.77	$33,149.44	
Dec-03	$33,149.44	0.01208	$400.56	$33,550.00	
Jan-04	$33,550.00	0.01208	$405.40	$33,955.39	
Feb-04	$33,955.39	0.01208	$410.29	$34,365.69	
Mar-04	$34,365.69	0.01208	$415.25	$34,780.94	
Apr-04	$34,780.94	0.01208	$420.27	$35,201.21	
May-04	$35,201.21	0.01208	$425.35	$35,626.56	
Jun-04	$35,626.56	0.01208	$430.49	$36,057.04	
Jul-04	$36,057.04	0.01208	$435.69	$36,492.73	
Aug-04	$36,492.73	0.01208	$440.95	$36,933.69	
Sep-04	$36,933.69	0.01208	$446.28	$37,379.97	
Oct-04	$37,379.97	0.01208	$451.67	$37,831.64	
Nov-04	$37,831.64	0.01208	$457.13	$38,288.77	
Dec-04	$38,288.77	0.01208	$462.66	$38,751.43	
Jan-05	$38,751.43	0.01208	$468.25	$39,219.68	
Feb-05	$39,219.68	0.01208	$473.90	$39,693.58	
Mar-05	$39,693.58	0.01208	$479.63	$40,173.21	
Apr-05	$40,173.21	0.01208	$485.43	$40,658.64	
May-05	$40,658.64	0.01208	$491.29	$41,149.93	
Jun-05	$41,149.93	0.01208	$497.23	$41,647.16	
Jul-05	$41,647.16	0.01208	$503.24	$42,150.40	
Aug-05	$42,150.40	0.01208	$509.32	$42,659.71	39,868.11
Sep-05	$42,659.71	0.01208	$515.47	**$43,175.18**	**Order of BK stated** ~~$37,007.38~~
Oct-05	$43,175.18	0.01208	$521.70	$43,696.88	
Nov-05	$43,696.88	0.01208	$528.00	$44,224.89	
Dec-05	$44,224.89	0.01208	$534.38	$44,759.27	
Jan-06	$44,759.27	0.01208	$540.84	$45,300.11	
Feb-06	$45,300.11	0.01208	$547.38	$45,847.49	
Mar-06	$45,847.49	0.01208	$553.99	$46,401.48	

Apr-06	$46,401.48	0.01208	$560.68	$46,962.17	
May-06	$46,962.17	0.01208	$567.46	$47,529.62	
Jun-06	$47,529.62	0.01208	$574.32	$48,103.94	
Jul-06	$48.103.94	0.01208	$581.26	$48,685.20	
Aug-06	$48,685.20	0.01208	$588.28	$49,273.48	
Sep-06	$49,273.48	0.01208	$595.39	$49,868.86	**As of the date of this BRIEF**

The Courts must note that the balance of $20,751.12 as of 08/00 is not a true amount since it is not amortized (as law allows) and therefore discriminates against Samadi)

Yet, even if we use this amount $20,751.12 and do not amortize for the 5 years, the interest would be: $20,751.12 * .145 * 5 = $15,044.56 (Int.)

Now, adding Principal and Interest to obtain new balance:

$20,751.12 + $15,044.56 = **$35,795.68 (Bal.)**

However, this method does not hold any amortization (as allowed by BK Rules).

As a result of the calculations shown in the spreadsheet above, the **minimal logical** amount (**$43,175.18, as of 9/2005**) would fall within the Bankruptcy Rules.

Also considering the fact that with the passage of time, the interest being accrued and that the balance is increasing. Therefore, as of the date of this Brief and with the Court's permission, the **minimal new balance** as of September 2006 is in the amount of $49,868.86.

3. **EXPESNES OF THIS LITIGATION AND COST OF COLLECTION.**

Throughout the years of these proceedings (ever since 1995, date of default), Samadi has suffered the expense of litigation and cost of collection. It is not unusual to sustain such cost. The agreement between the parties also allowed legal fees. Both this Honorable Court and the Honorable BK referenced the rule 506(a) and specially 506(b) as both Courts herein cited higher courts. The Bankruptcy Court acknowledged Samadi's legal and collection costs. In doing so the Honorable BK ordered what Samadi previously asked. However, and at no fault of the Court,

a. Samadi's legal expenses continues accruing until hopefully either this Honorable Court or the Honorable BK stops the madness of filing repeated motion and finalize this matter so that no more proceedings can be filed. At that time, Samadi's cost will only be reduced to the administrative fees of reviewing the account (up-keeping) until the account is paid in full. Which such administrate fees ranging between $25.00 to $50.00 each time the account is access for review and recalculation. This fee does not include cost of research or the replies to the Court.

b. Samadi made an error in calculating his previous fees by ignoring a section of expenses incurred. When Samadi amended the section of legal fees in his MTR (Exhibit B, BK Doc. No. 98). In refreshing this Court with the list of expenses, Samadi presents the following spreadsheet.

Date	Amount	Description CB means Cathy Bouchard who assisted me
11/21/95-9/96	$450.00	CB. Assist. Fee. File review and letter, research
2/96-9/96	$225.00	Admin fee and processing
08/16/96	$75.00	Communication with English, letter of temp. pay-off., loan processing
09/24/96	$1350.00	Dotrch's Several Travel to help w/Oliver loan. Also his time away from work.
9/96	$491.00	Attrny. Frank Asking/foreclosure
9/96	$50.00	Attrny, Paul Balducci, Oliver bankruptcy consulation.
11/04/96	$150.00	Attnry. Richard Valdeljulie, Atlanta, & meeting w/Ms. R. Thomas
1/97	250.00	Travel to Court & several previous (96) travel to collect payments
7/97	25.00	LD calls to Bnkrcy. Crt. several times.
10/99	25.00	Admin Fees to review the document and visited Ms. R. Thomas/ gas
10/99 thru 2/00	60.25	CB. Researched proof of claim form, filed Admend proof of claim
2/00	85.75	Admin fee and review of law regarding corrected proof of claim, letter (C.B.)
3/00	35.00	L.D. to Trustee, Ms. Wiley, Clerk, Oliver & Robinson
6/00	125.00	CB.Letters to the Judges.
12/00	50.00	CBC.Admin. Fees, letter 12/27 that intreset shuld be calculated.
2/01	75.00	Admin fees (letter & calls) C.B.
4/01	250.00	CBC. Feb. motion fees for research and help.

8/01	1,174.70	CB.Admin fee (CB) help pre. Docs. And motions.
10/01	75.00	CB. Research Bknrcy and contract law, and letter to oliver that if balance is not paid soon, Late fes will accur.. $75.00/month
10/01-11/01□	350.00	CB. Prep and research regarding new motions by Oliver's & typing motion□
11/10/01-	250.00	CB. Admin fee, record keeing & accounting
½	300.00	Maint. Fee and Late fee & (spreadsheet)
11/14/01-2/07/06	3,975.00	CB. Case/law search, Motion organization and typing fee
Total	$9,896.70	

These fees also continue in accruing as long as the pleadings continue.

Consequently, Samadi begs the Courts to somehow finalize the proceedings, or grant that fees will automatically accrue "without filing motions (to request for additional fees for expenses) each time".

Therefore, the calculations presented by the Honorable Bankruptcy Court do not seem to be clear nor presents the entire balance of secured claimed owed. Moreover, as the expenses of these proceedings continues to accrue, the Honorable Bankruptcy Court has not considered all Samadi's expenses by not granting his motion for correction of fee calculations.

Respectfully Submitted,

Mike H. Samadi, Pro Se Appellant

4555 Bettys Branch Way
Evans, GA 30809
(706) 364-0555

CERTIFICATE OF SERVICE

This is to certify that I have this day served the parties below with a copy of the forgoing matter by depositing the same in the United States Mail in a properly addressed envelop with adequate postage thereon:

1/11/07 2C Rec 22

6/1/07 spoke w/ MD to
@ 10:32 am
said last filing on 5/17/07 for
"objection of Appellee to
Appellant MTR"
10:33 am called MD w. She is
saying that she sent. I
asked for another copy
because I did not receive
the first
Filed a Motion for Extn

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HAMID MIKE SAMADI,

Appellant,

v.

MARLENE H. OLIVER,

Appellee.

CIVIL ACTION FILE
NO. 1:05-CV-3231-BBM

Appeal from Bankruptcy
Case No. 96-75320-MHM

EXHIBIT H

ORDER

This matter, an appeal from a Bankruptcy Court ruling, is before the court on the Motion to Strike Appellee's Response to the Brief [Doc. No. 15] and the Motions for Hearing Regarding Counsel's Deception, to Strike Appellee's Motion to Dismiss Appeal, and to Sanction Counsel for Abuse [Doc. No. 19] filed by Appellant, as well as the Motion to Dismiss Appellant's Appeal [Doc. No. 17] and Motion for Leave to File Her Response to Appellant's Brief [Doc. No. 18] filed by Appellee.

I. Brief Procedural History

Appellee tells the court that she "is in disarray and confused over the present status of this case." (Mot. to Dismiss Appellant's Appeal 2.) She is not the only one who feels that way. Before attempting to briefly recount the recent procedural history

of this case, the court notes that in its last Order, it attempted to finally end the slow languish of this appeal on its docket by admonishing the parties to comply with a few solid deadlines. Unsurprisingly to anyone familiar with the history of this litigation, due to further confusion as described below, the case has yet to be fully briefed on the merits.

Though this court has seen this matter before, its most recent journey here started when Mr. Samadi filed the Notice of Appeal in the Bankruptcy Court on November 21, 2005, in which Mr. Samadi specifically requests that this court review the Bankruptcy Court's interest calculation on a payment owed him by the Appellee. Mr. Samadi's Notice of Appeal indicates that he is appealing an Order of the Bankruptcy Court dated November 9, 2005,[1] from an adversary proceeding bearing the case number 00-6893. His case was docketed in this court on December 21, 2005, and abr iefing schedule was set by Notice from the court on December 28, 2005. Shortly thereafter, on January 12, 2006, Mr. Samadi asked the court to stay his appeal

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[1]Mr. Samadi's November 21, 2005 Notice of Appeal in the Bankruptcy Court is entitled, "Notice of Appeal from the Order Regarding Interest Calculation on Secured Loan." In its August 31, 2006 Order, this court indicated that Mr. Samadi appealed from the Bankruptcy Court's September 29, 2005 Order, since Mr. Samadi did not specify which Order he was appealing from and that Order did address interest calculations. However, upon further review, it appears that Mr. Samadi was actually attempting to appeal from the Bankruptcy Court's November 9, 2005 Order, which modified the September 29 Order, and which also discussed the interest calculation on the secured loan.

until the Bankruptcy Court had ruled upon a Motion for Reconsideration filed by the opposing party in the Bankruptcy Adversary Proceeding from which he was appealing. Two months later, on March 14, 2006, this court granted Mr. Samadi's Motion to Stay, but admonished him that he would have to move to reopen this proceeding within thirty days of the Bankruptcy Court's ruling on the Motion for Reconsideration, which this court thought he was waiting for. However, unbeknownst to this court, the Bankruptcy Court had already denied the Motion for Reconsideration by the time of this court's Order, and Mr. Samadi moved immediately (on March 15) to reinstate his appeal, and also (on March 20) to reopen his appeal.[2] By Order of August 31, 2006, this court granted both of those motions, but also ordered the following deadlines: Mr. Samadi's appeal brief was due on September 15, 2006; appellee's response was due no later than fifteen days after service of the appeal brief; and Mr. Samadi's reply brief was due ten days after the service of Appellee's response. In case it was not clear from the Order's tone, the court cautioned the parties that "THESE DEADLINES ARE SET IN STONE." (Aug. 31, 2006 Order 3.)

Nevertheless, although Mr. Samadi filed his brief on September 11, 2006,

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[2]Because Mr. Samadi filed a new Notice of Appeal in this court, rather than in the Bankruptcy Court, the case took a brief detour to the Eleventh Circuit.

Appellee never filed a response . . . in this court. Appellee did, however, file a Motion for Extension of Time to Respond to Mr. Samadi's September 11 appeal brief, but she did so in the *Bankruptcy* Court. The bankruptcy judge denied this motion by Order of October 3, 2006 – understandably, as it appeared that Appellee was asking for extended time to respond to a phantom brief. See Order of Bankruptcy Court, Oct. 3, 2006 (Murphy, J.) ("The docket for this adversary proceeding shows no such filing."). Apparently not dissuaded by the Bankruptcy Court's finding that no such brief existed on its docket, Appellee filed a Response to Defendant's Brief in that court the next day.

Meanwhile, back on this court's docket, Mr. Samadi filed an Objection to Appellee's Motion for Time to Response [sic] [Doc. No. 14] on September 25, 2006 (regarding Appellee's September 28, 2006 motion in Bankruptcy Court), as well as a Motion to Strike Appellee's Response to the Brief [Doc. No. 15] (in an apparent attempt to prevent Appellee from filing any further pleadings in the Bankruptcy Court). Appellee, seemingly having realized that the appeal was proceeding apace in this court without her, filed a Motion to Dismiss Appellant's Appeal [Doc. No. 17] on October 19, 2006, and a Motion for Leave to file a Response to Appellant's Brief [Doc. No. 18] on October 25, 2006. Finally, On October 30, 2006, Mr. Samadi filed a Motion for Hearing, a Motion to Strike Appellee's Motion to Dismiss, and a Motion

for Sanctions against Appellee's Counsel [Doc. No. 19].

II. Analysis

Rule 8002 of the Federal Rules of Bankruptcy Procedure requires a party to file a notice of appeal with the clerk of the Bankruptcy Court "within 10 days of the date of the entry of the judgment, order, or decree appealed from." Fed. R. Bankr. P. 8002(a). The Rule further provides that if a party makes a timely motion to, *inter alia*, alter or amend the judgment appealed from under Rule 9023 (including motions for reconsideration, see Britt's Home Furnishing, Inc. v. Hollowell (In re Hollowell), 242 B.R. 541, 542-43 (Bankr. N.D. Ga. 1999) (Murphy, J.)), "the time for appeal for all parties runs from the entry of the order disposing of" that motion. Fed. R. Bankr. P. 8002(b). Thus, the Notice of Appeal is "ineffective to appeal from the judgment . . . specified in the notice of appeal, until the entry of the order disposing of the" outstanding motion for reconsideration. Fed. R. Bankr. P. 8002(b)(4). As the advisory committee notes explain, "[i]f the judgment is altered upon disposition of a postjudgment motion . . . and if a party who has previously filed a notice of appeal wishes to appeal from the disposition of the motion, the party must amend the notice to so indicate." See Fed. R. Bankr. P. 8002 advisory committee's note (1994 amends.) As a corollary, when the judgment is unaltered by the disposition of the motion to reconsider, such that the party who previously filed the notice of appeal does not

D.C. says his [redacted] J denies my 2nd Notice of Appeal for Legal Expense

wish to appeal from the disposition of the motion to reconsider, no amendment should be required.

As set forth above, Mr. Samadi filed a timely notice of appeal in the Bankruptcy Court on November 21, 2005, but apparently without realizing that Ms. Oliver had already filed a Motion for Reconsideration on November 18, 2005. According to the terms of Rule 8002, Mr. Samadi's Notice of Appeal was ineffective to appeal from the judgment specified in that Notice until the Bankruptcy Court disposed of the Motion to Reconsider that same judgment. Accordingly, this court granted Mr. Samadi's Motion to Stay proceedings on March 14, 2006, pending such disposition. However, this court mistakenly issued that stay without realizing that the Bankruptcy Court had *already* issued an Order disposing of Ms. Oliver's Motion for Reconsideration, on February 24, 2006. Thus, by moving to reopen his appeal shortly after this court's March 14 Order, his Notice of Appeal again became effective.[3]

Thus, Mr. Samadi's appeal of the November 9, 2005 Bankruptcy Court Order is now properly before the court, and, pursuant to this court's Order of August 31, 2006, he timely filed his Appeal Brief on September 11; however, Ms. Oliver did not

[3]Although Appellee asserts that it was her understanding that the Bankruptcy Court had required Mr. Samadi to amend his Notice of Appeal within ten days of the Bankruptcy Court's Order, Rule 8002 and its advisory committee notes make clear that a notice of appeal need not be amended unless the judgment was altered on that post-judgment motion, as noted above.

respond in a timely fashion -- at least, not here.[4] Appellee offers various excuses for why she failed to respond to Mr. Samadi's pleadings in this court, but they essentially boil down to two. First, she was unaware that Mr. Samadi's appeal was ongoing or that this court had present jurisdiction, since her counsel did not believe that Mr. Samadi had complied with the proper procedural requirements. Second, Appellee asserts that she "never received a notice from the Clerk of this Court stating that the case had been docketed for Appeal or notifying Appellee of a time to respond,"[5] and that she only became aware of the appeal because Mr. Samadi, believing Ms. Oliver's counsel's tactics intentional, filed a motion in the Bankruptcy Court to strike Appellee's pleadings there. (Mot. to Dismiss Appellant's Appeal 4.)

As a preliminary matter, the court would like to address Ms. Oliver's assertion that she "believes that the Court's error of not notifying her, or her counsel of any Court decisions on Mr. Samadi's pleadings could be nothing more than a mistake in the clerk's office." (Mot. to Dismiss Appellant's Appeal 1.) Because Ms. Oliver's

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[4]As set forth above, Ms. Oliver did file a short response to Mr. Samadi's appeal brief in the Bankruptcy Court, but it only responds to a single aspect of that pleading.

[5]The court questions this statement for a number of reasons, including the fact that elsewhere in her Motion to Dismiss Appellant's Appeal, Appellee notes that the "first and only document [she] received from this Court was a scheduling document from the clerk's office" dated December 28, 2005. (Mot. to Dismiss Appellant's Appeal 3.) Of course, that document was the document from this court notifying her that the case had been docketed for appeal.

counsel did not register for electronic filing until October 18, 2006, this court notified him (as it notifies every party not so registered) by mailing a copy of every pleading and Order to his attention at his office in Decatur, Georgia. Thus, to the extent there was some breakdown in communication, it was not due to any action by this court or the clerk's office, and the court doubts Appellee's counsel's assertions that he never received this court's August 31, 2006 Order.

Nevertheless, based on the substantially confusing procedural posture of this case, exacerbated by the filing errors, this court's March 14, 2006 Order, and the fact that Mr. Samadi is acting *pro se*, justice and judicial economy require that the court regain control of this matter, and the court will make one final attempt to resolve the case without further delay. Appellant has already filed his appeal brief with this court. Ms. Oliver did not respond due to the confusion regarding in which court the appeal was proceeding, but she did file a Motion for Leave to File Her Response to Appellant's Brief. That motion is hereby GRANTED, except as herein modified: Ms. Oliver must file her response by January 25, 2007; if she fails to do so, the court will consider Mr. Samadi's appeal unopposed. If Mr. Samadi wishes to reply, he must do so no later than February 5, 2007. The court will likely decline to consider any pleading other than these two.

favors Oliver

The court would also like to point out that although Mr. Samadi attempts to address several issues in his September 11, 2006 Appeal Brief, his November 21, 2005 Notice of Appeal appeals the findings of the Bankruptcy Court's November 9, 2005 Order only, and Mr. Samadi never amended that Notice of Appeal. Thus, the only judgment of the Bankruptcy Court Mr. Samadi properly appeals from is that court's interest calculation, which in turn is the only issue this court will address. Accordingly, Appellee's brief need only discuss the following issue: was the Bankruptcy Court's calculation of interest in its November 9, 2005 Order correct and if not, why not?

As a final note, it is this court's sincere hope that the parties will adhere to these deadlines and that it will be able to rule on the appeal shortly after February 5, 2007 without further distractions, and finally put this long-languishing matter to rest.[6]

III. Summary

For the foregoing reasons, Appellant's Motions to Strike Appellee's Response to the Brief [Doc. No. 15] and for Hearing Regarding Counsel's Deception, to Strike Appellee's Motion to Dismiss Appeal and to Sanction Counsel for Abuse [Doc. No. 19]

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[6]Additionally, because they lack merit, and to further expedite the final disposition of the appeal, all other pending motions are hereby DENIED.

are DENIED; and Appellee's Motion to Dismiss Appellant's Appeal [Doc. No. 17] is DENIED.

However, Appellee's Motion for Leave to File Her Response to Appellant's Brief [Doc. No. 18] is GRANTED. Appellee has until January 25, 2007 to file a response to Appellant's brief filed September 11, 2006, and Appellant then has until February 5, 2007 to reply.

IT IS SO ORDERED, this 11th day of January, 2007.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE

74 11/17/08 DC Rec. 23

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

HAMID MIKE SAMADI	:	APPEAL FROM BANKRUPTCY CASE NO. 96-75320-MHM
APPELLANT	:	
-VERSUS-	:	
MARLENE H. OLIVER	:	CIVIL ACTION FILE NO. 1:05-CV-3231-BBM
APPELLEE	:	

APPELLEE'S RESPONSE BRIEF **EXHIBIT I**

STATEMENT OF MATERIAL FACTS

On September 29, 2005[1], the Bankruptcy Court reached a decision that the Defendant, then Mr. Samadi, was entitled to Post Petition Interest on his Adversary Counter-Claim[2] based on *Universal American Mortgage Co. v Bateman, 331 F. 3rd 821 (11th Cir. 2003) and In re Telfair, 216 F. 3d 1337 (11th Cir. 2000)*, even though those decisions were not reached until 4 or more years after the Debtor had filed her Chapter 13

[1] *The date was September 29th, 2005, rather than September 9th as mentioned in the Court's Order.*

[2] *An Adversary Complaint was filed against Defendant to force him to give Plaintiff a Quit Claim Deed following her discharge, after she was ordered to pay and did pay Mr. Samadi on two prior Amendments to his Proof of Claim and received her discharge. This was when Mr. Samadi filed his Counter-Claim for Post Petition Interest.*

-kept
-not
accept the
order
regarding this Adversary proceeding

Petition.[3] In its order [Claim Order] of September 29th, 2005, the Court gave Mr. Samadi ***$30,868.79 Post Petition Interest*** on the claim amount as of November 15, 1995 which was $35,000, and then reduced the interest by acknowledged payments made after November 15, 1995, concluding that Mr. Samadi was owed ***$27, 007.38 in Post Petition Interest.*** It reiterated its ruling in its February 22nd, 2006 order with the following language:

"On September 9th, 2005[4], an order was entered calculating the amount of Defendant's secured claim (Claim Order). As the parties do not dispute the claim is over-secured, post petition interest was allowed and calculated by amortizing the amount of the claim as of November 15, 1995, $35,000.00 at 14.5% interest up to and including September 15, 2005..."

STANDARD OF REVIEW

Plaintiff is not certain of the Standard of review which should be applied in this case, but believes it is or could be abuse of discretion, which is the Standard of Review for a Bankruptcy Court's decision on whether to allow claims. ***See Adams v. Evans, 642 Fed2d 173(5th Circuit 1981).***

ARGUMENT AND AUTHORITY

The Bankruptcy Court's calculation of interest in this case is clearly explained in its Orders of September 29th, 2005 and February 22nd, 2006, and even though Defendant has

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[3] *The Debtor filed her Petition of September, 1996.*

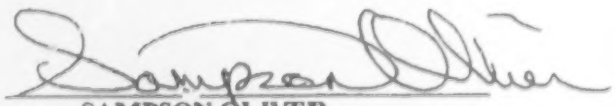
[4] *Same as Foot Note (1) above.*

attempted to point out several methods by which this Court could have made its calculations, yielding him more money, he has not shown Court error. The Court said in ***Dye v. Dotson*** ***201 Ga. 1 (4), "since there is no specific assignment of error, a vague, indefinite and uncertain assignment of error ... presents no question for decision by this Court." "The Court is not compelled to grope in ascertaining what the error is..." See Backer v Metalling Co., 103 Ga. App 174.***

Because Mr. Samadi has continuously rejected the Court's calculations up until now, which the Plaintiff believes has stopped any further accumulation or increase of interest.

CONCLUSION

Plaintiff does not believe the Court abused its discretions in calculating the Interest in this case since she cannot find any cases which indicates such.



SAMPSON OLIVER
ATTORNEY FOR PLAINTIFF
GA BAR NO. 552550

SAMPSON OLIVER
ATTORNEY AT LAW
1826 GLENHILL PLACE
DECATUR, GEORGIA 30032
(404) 284-5114

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

D.C. Rec 24

HAMID MIKE SAMADI APPELLANT/Defendant	
v.	CIVIL ACTION NO. 1:00-CV-1-221-RM
MARLENE H. OLIVER APPELLEE/Plaintiff	BANKRUPTCY CASE NO.: 96-75320-MHM

EXHIBIT J

AMENDED NOTICE OF APPEAL AND
MOTION TO RECONSIDER APPELLANT'S BRIEF

COMES NOW, Mike Samadi, Pro Se Appellant and respectfully files his Amended Notice of Appeal and Motion to Reconsider the Full Brief and courteously presents to this Honorable Court the following:

The Court has described the matter of this appeal very clearly and concisely. According to the recent Order of this Court [Doc. No. 22], among many issues addressed, the Court noted two items as they are highlighted below:

1. the confusions caused by Mr. Oliver's and resolved those confusion in the favor of Ms. Oliver;
2. "*the court will likely decline to consider any pleading other than these two*" referring to a new Oliver's reply to Samadi's brief and Samadi's reply with new deadlines.

However and respectfully, Samadi feels discarded and dealt harshly as the Court has held him at a higher standard than Ms. Oliver's Counsel (Mr. Sampson Oliver) who has been trained to know the law, requirements and procedures of the Courts and has been filing all proceedings before this Court and the Bankruptcy Court for over the past two (2) years. Mr. Oliver (a knowledgeable attorney) decided to file his repeated and unnecessary proceedings and responses on behalf of his client in a Court other than where the proceedings should have been filed. This

Court reasoned that his proceedings filed incorrectly; however, gave Ms. Oliver and Mr. Oliver time to file yet another reply to Samadi's brief. Meanwhile, the Court discarded the confusion caused upon Samadi when the Orders of the Honorable Bankruptcy Court and the repeated proceedings filed by the Oliver before that Court (even though the Judgment of that Court was final). In fact, it was this Court that resolved (responded to) one of Samadi's query. As to the extent of the confusion (in which Samadi frequently addressed [Doc. No. 13 Page 3 ¶¶ 6, page 4 ¶¶ 8, page 5 ¶¶ 3 and Doc. No. 3, page 1, ¶¶ 5, page 2 ¶¶ A]), Samadi filed a Notice of Appeal and again filed another Notice of Appeal [Doc. No. 10] which was forwarded on March 17, 2006 (recorded March 27, 2006). This notice was filed immediately after the Court Order [Doc. No. 4] and as a result of the Bankruptcy Court Order from days prior. This notice was intended to Amend Samadi's Notice of Appeal; however, it was addressed as Notice of Appeal. As a result, the Clerk of the Court thought Samadi was appealing this Court's Order and therefore, prepared to have the matter transferred to the U.S. Court of Appeals for the 11th Circuit. After brief communications with the Clerk's office Samadi was instructed that this new Notice must be dismissed since the appeal was already on the docket. Consequently, Samadi forwarded a letter dated March 27, 2006 [Doc. No. 11] requesting correction of the error.

Even considering Mr. Oliver Motion for Leave, he has already filed proceedings thereafter.

It would be a grave injustice to Samadi (whose legal expenses are accruing as this matter continues) not to have these expenses considered, while attorneys such as Mr. Oliver are free to add-on their cost and expenses. Furthermore, there would have been no reason for Samadi not to include his expenses in this appeal when his current costs (or cost at the time the appeal was reinstated) have been much higher than approximately three (3) years ago when the Bankruptcy Court Ordered him to file his interest amount and expenses with a daily accrual. Moreover, the expenses are not as a result of Samadi's doing, but the Oliver's. Samadi was ready to settle this

matter with Mr. Oliver back in July 2001, when Mr. Oliver contacted Samadi and the parties reached a settlement; however, Mr. Oliver repeatedly attempted to reduce the agreed amount.

CONCLUSION

It is this Honorable Court's Order that stated these dates are set in stone. Samadi took all the steps necessary by law and the Orders of both Courts. However, Mr. Oliver took it upon himself to continue filing proceedings even after the Orders of both Courts. The Oliver's confusion throughout the years in both Courts have been noted and discussed. The Courts have been very lenient and compassionate towards Ms. Oliver and her **three trained counsels,** while discarding Samadi's layman attempt to pursue justice. Moreover, Mr. Oliver has already filed reply to Samadi's brief. The confusions were NOT caused by Samadi. He continually stated his confusion as to the direction the proceedings were heading in both Courts. Among **ALL his responses and pleadings filed in both Courts**; as well as, family illnesses Samadi has been dealing with, **it would have not taken much time to prepare a one or two sentence paragraph called "Amended Notice of Appeal", if Samadi had known that ONLY his initial appeal is considered even after** the pending final order of the Bankruptcy Court. When Samadi filed his motions [Doc. No. 5] and [Doc. No. 7, 8, 10 and 11] Samadi's full intention was to Appeal both the interest calculation and the astonishing expenses he has been incurring as it is still accumulating. Furthermore, the tune of those motions (relating to amounts) are very clear even if there was no notation of "Amended" Notice of Appeal. Samadi prays that the Court grants his Amended Appeal; otherwise, it would be "unjust" to him as he feels he is being held to a higher expectation than a counsel and he is being held accountable for faults that are not his.

WHEREFORE, Appellant begs the Court to Reconsider the facts and this Motion, grant his Amended Notice of Appeal and Order on all issues discussed in his Brief [Doc. No. 11]. Also, Samadi begs the Court's forgiveness as this motion may have possibly changed the last

deadline set for filing reply to Samadi's brief.

Respectfully Submitted,

Mike H. Samadi, Pro Se Appellant

4555 Bettys Branch Way
Evans, GA 30809
(706) 364-0555

CERTIFICATE OF SERVICE

This is to certify that I have this day served the parties below with a copy of the forgoing matter by depositing the same in the United States Mail in a properly addressed envelop with adequate postage thereon:

Sampson Oliver
1826 Glenhill Place
Decatur, GA 30032

On this 18th day of **January, 2007.**

Mike H. Samadi, Pro Se Appellant

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

2/ /07
DC Rec. 25

HAMID MIKE SAMADI

APPELLANT/Defendant

v.

MARLENE H. OLIVER

APPELLEE/Plaintiff

EXHIBIT K

CIVIL ACTION NO. 1:05-CV-3231-BBM

BANKRUPTCY CASE NO.:
96-75320-MHM

APPELLANT'S REPLY TO APPELLEE'S RESPONSE

COMES NOW, Samadi, pro se Appellant and respectfully files his reply to the Appellee's Response Brief and presents to the Court the following:

Although Samadi does not wish to use the term "err" when discussing the Court Orders; however, the Order of the Bankruptcy Court in awarding interest, raises precision issues.

Setting aside all facts and formulas of interest calculations, the simplest analogy is the fact that any person who is involved financial transaction is aware that any principal with the interest rate of ten (10%) percent doubles in seven (7) years "*Time Value*" also known "*Rule of 72.*".

Now considering the terms in this litigation where the interest rate is 14.5% which is a lot more than the "rule of 72" (analogy used above) and the term had been 10 years (pursuant to the Bankruptcy Court Order of September 29, 2005) which is also one and half times than the time frame used in "rule 72." Therefore, the interest amount for the purpose of this litigation must be at minimum, more than the principal.

The principal being $35,000.00, using the simplest interest calculation, not even applying the above analogy, nor using any amortization, would conclude to an amount of $50,750.00.

(10 yrs. * 14.5% * $ 35,000.00 = $50,750.00)

However, using this analogy would put the amount of interest well above $75,000.00. Therefore, the calculation/of the interest in the Bankruptcy Court Order is not meeting any accounting standards.

REPLYS TO ARUGMENTS OF APPELLEE'S RESONSE

It is so unfortunate that the Courts ignore all of Mr. Oliver's negative, disrespectful and distorted remarks, when in fact, he has been the one who has repeatedly tailored fictous claims throughout the course of this litigation, yet Samadi believes the Courts favor him.

Under Footnote 2 of Appellee's Response Brief, [Doc. No. 22 or 23], Mr. Oliver argued that "*Mr. Samadi was paid on two prior amendments and received his discharge.*" However, **Mr. Oliver failed to note the fact** that the Bankruptcy Court Vacated the Discharge shortly after the adversary proceedings began, when the Court noticed that Samadi's amended proof of claim had been over- looked. This issue alone has been repeatedly argued during the past six (6) years (to Mr. Oliver's ignorance).

Finally in the last statement of his response, Mr. Oliver argued, "*Because Mr. Samadi has continuously rejected the Court's calculations up until now, which the Plaintiff believes has stopped any further accumulation or increase of interest.*"

Mr. Oliver has again made a statement in error and failed to state the facts clearly (as he continuously does). Mr. Oliver and Mr. Jordon were the ones who previously rejected the Bankruptcy Court's Order regarding the interest and therefore, filed the appeal in 2002. In fact the records clearly show that Samadi has been consistent with all his claims and in agreement with BOTH of the Courts Orders, until recently, Mr. Oliver s has refused to accept that Opinion and Orders of the Supreme Court and Court of Appeals in cases where the over-secured mortgages are entitled to interest in the bankruptcy proceedings. It Only since the September

2005 Order which Samadi has shown disagreement with that Order and repeatedly begged the Court to Amend the Order since he respectfully believes no accounting method coincide with the Honorable Bankruptcy Court Order. This alone was the reason that Samadi repeatedly begged that Court to show the steps and details on how the Court reached the interest amount.

CONCULSION

1. Appellant respectfully believes that the interest the Honorable Bankruptcy Court has granted is well below the amount using any reasonable accounting methods.

2. Moreover, Appellant respectfully believes the calculation of interest continues and accrues until all issues of this mater are resolved and Samadi is paid in full.

3. Pursuant to previous communications with Mr. Oliver, (after 35 years of practice, as he so claims) Mr. Oliver believes, the accumulation of interest stops on the day an Order is issued and interest cannot be accumulated thereafter, however, Mr. Oliver needs to be refreshed or corrected. In the world of financing as far as Samadi is aware, any mortgage balance accumulates interest until that full balance is paid, as Samadi faces this issue on monthly basis with mortgage lenders. Mr. Oliver's ignorance, distortion of facts, abuse of the Courts' discretion and mischaracterization of Samadi has been well documented throughout these lengthy proceedings.

Respectfully Submitted,

Mike H. Samadi, Pro Se Appellant

4555 Bettys Branch Way
Evans, GA 30809
(706) 364-0555

On this 4th day of February, 2007